

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

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

(Reference: rights, interest and well-being of children and young people)

Members:

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

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 5 DECEMBER 2002

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

By authority of the Legislative Assembly for the Australian Capital Territory

The committee met at 2.08 pm.

LINDA CREBBIN and

CHRIS STANIFORTH

were called.

THE CHAIR: Welcome to our inquiry into the rights, interests and wellbeing of children and young people, and thank you very much for sparing us the time. I will now read you this caution for the record.

You should understand 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 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.

This hearing is, as you know, being broadcast around the building, and to certain public service offices. We will do the usual thing—invite you to make an opening statement, and then we will see where that leads us. Before you start, I would ask you to identify yourselves and the organisation that you represent for the record.

Ms Crebbin: I am Linda Crebbin, Assistant Executive Officer, Legal Aid Office, ACT.

Mr Staniforth: I am Chris Staniforth, Chief Executive Officer, Legal Aid Office, ACT.

We want to volley the ball back over the net to you and say that, rather than you listening to us make a long and turgid exposition of what we think is the history of the cosmos, it might be better if you ask the questions you are interested in.

MR CORNWELL: Yes, good idea.

THE CHAIR: Okay, does anybody want to begin?

MRS CROSS: Yes. This question is open to anyone who'd like to answer it. How can we improve children's understanding of the legal system in the ACT?

Mr Staniforth: Do they get any easier after this one?

MRS CROSS: No.

Mr Staniforth: There are a lot of answers to that. You must give a multifaceted answer to that question. There is a real problem with the way we do law as adults, and with how our community understands it, particularly children. We lawyers would tell you—and you would say from a vested position, but we would say that it is because in our position

we try to stand up for people's rights—that some of what are seen to be complexities and confusions are really very important safeguards.

When you try to simplify things and to make those famous plain English type amendments, you can often trample on some very delicate and important things. It is really quite important that, as you explain in simple things what you are doing, you do not lose the really big safeguards, especially those in the area of children's law. You do that through, one would have thought, those agencies in our community who have ancillary dealings with law and lawyers, and that is related to one of the main things I wanted to say to you today. That is an area that I think is grossly undervalued at the moment in our community.

I suspect this might come up shortly, however, there is a lot of discourse going on to the effect that lawyers are dumb because they don't understand about attachment theory and parental alienation syndromes, and such things. However, nobody is yet having the conversation that says, "What are our public sector people doing about knowing the law and telling the people under 18 about its effect?"

MRS CROSS: I will tie that into my next question. How can we reduce the length of time between the offence and the consequence, that is, the court case? One of the complaints that we hear is about the length of time it takes for something to reach the final stages, thereby increasing the stress levels and the trauma for the child involved.

Mr Staniforth: Again it is a balance thing, isn't it? Some time has to go by between the investigative part of a charge process and its final resolution. As do all of us around this table, children have an absolute right to understand fully what they are being charged with, and what the options available to them are. That is a resource issue, and dealing with it is going to take time. Having said that, I would have thought that the stats from the Children's Court were not bad at all, certainly by comparison to national statistics. A large number are dealt with on the first day of court and another significant number are dealt with within three weeks. For lawyers, that is almost amazing pace. In my head, that is okay, and I really would not want to suggest that you should rush it any more than that.

Ms Crebbin: I would need to understand where that question comes from, if that makes sense. Where do other people see the points of delay? Certainly, it is important to recognise that there will be some matters that come into the youth justice system involving children who have extremely complex problems that are very difficult to isolate from their criminal problems. They will have care and protection problems. Those things go together like Tweedledum and Tweedledee. Sometimes the court process has to deal with those children in a slow, careful and considered way, rather than disposing of them quickly and moving on to the next one.

It is valuable to keep sight of the fact that a proportion of people will be best served in the court system if the court has a role that will allow it to prolong a proceeding, to make sure that things that are ordered or suggested are happening and working.

As for other delays, it would certainly be our experience in youth justice matters, as it is Chris's, that once matters get into the court, the majority of them are disposed of rapidly compared to those in the adult system. Even of those that aren't dealt with within three weeks, the large majority would be gone within a further period of three months.

If there are perceptions that keeping people in the youth justice system for a very long time can be stressful, that is right, but I guess the circumstances that bring them in there in the first place are stressful as well. Perhaps they should be understood and carefully dealt with before some blanket approach is made to cut that time down.

MS DUNDAS: Would you explain how you see the new youth legal centre working and what you are hoping to achieve with it?

Mr Staniforth: We started out with two main aims. In this pilot stage, we hope it will be a tool that will assist this committee, and indeed the Assembly, in its consideration of one of the issues that you face right now—is there a need for a youth law centre? We have never been sure, to be frank with you. It is like everything in this area: you could really analyse this for several weeks and still not get the right answer. What do you mean by youth law centre? What should it look like? What is the model it should follow? How should it operate? When should it operate?

When it should operate is a good question. We thought what we could offer was a pilot that tried to look at a lot of those questions. We would not say, “This is the answer and that is how it will be”, but instead, “It is a pilot that has these features, that has done this and that. It failed here and was good there.”

The second, and probably even more important point, is that it had to be an effective resource for its users. It has to be a place where you are not messed around. As we know, people under 18 are probably similar to the rest of us in that they don't go to lawyers in a rush. You do not use a legal resource if you can avoid it. For years, I have used the analogy of the dentist—if you are like me, you tend to leave that for next year if you can, and it is the same with a lawyer. We were looking at making it an effective, modest referral centre that was a first stop, and a stop that got you to the place to which you needed to go.

What it wouldn't do is take on long and involved cases. There would be an emphasis on getting you to a better source of help. However, and this is the last point, so much of law masks a lot of other issues. When people come to Linda and me at Legal Aid, they may appear to have a legal problem at the start, but as you start to peel away the details of the case, you may see that there are many social and economic issues involved. We are lawyers: we cannot help people with these other issues. We think there are experts out there in this town. We are very lucky in this town to have lots of good people who can do a lot of good work, so we send people to them.

MS DUNDAS: Do you think that—

Ms Crebbin: Can I interrupt there?

MS DUNDAS: Yes.

Ms Crebbin: I will just follow on from what Chris was saying. Exactly the same proposition works in reverse. What I am about to say takes us back to the first proposition he was making. A lot of young people will present to case workers, youth workers and health service providers with a range of problems, and buried in there may well be a legal problem. We suspect that a lot of those legal problems are not addressed.

Just as their needs are complex from a legal perspective, so are they from a social perspective. What we hope the centre will do is both provide referrals when there are issues to be dealt with, and receive referrals from those other service providers for young people. We can then say, “Yes, there is a legal issue here, and solving that is going to be part of the picture to offer we this young person to solve a broader range of the issues.”

It would be wonderful if we could solve a broader range of the issues. There is a symbiotic relationship between the last proposition that Chris was raising—that is, being a place that can refer people on to other service providers—and the first proposition—demonstrating the legal need, and providing a useful service for those who deal with young people in other professions or other types of services.

MS DUNDAS: Chris, you were talking about legal referrals, and you said that the centre won't be handling long-term major cases. Do you think that there are the resources to refer young people on to the lawyers in the system who understand the complex issues facing young people, and have you the ability to communicate that in a legal sense?

Mr Staniforth: Might I be so bold as to congratulate you on that question? The law for people under 18 is much more complicated than it is for us, in many ways. The lawyers know and will talk to you about the law of necessities: you can be bound by a contract if you are under 18 if it is for necessities. Whether that old-fashioned law is still applicable today is a nice question. When my daughter, who is 17, has trouble with her mobile phone, what is her contractual status?

Ms Crebbin: She thinks it is necessary.

Mr Staniforth: My word she does. Deceptively simple issues are immensely complicated. In a very real sense—and I did pick mobile phones deliberately, of course, because marketing by big corporations is pitched at people under 18—it is an area in which a lot of work can be done. A lot of consumer law work is waiting to be done. We have an excellent consumer law centre. I don't know whether it could take the flood of work which I suspect might be out there. That is a question I would feel much more comfortable answering for you in about 10 to 12 months, when we have looked at the flow that comes through the centre.

THE CHAIR: Can I give you a question that follows on from that, and which you may also find that you can't answer for another 10 months? We heard in earlier evidence that people in the legal profession who are representing young people do not necessarily actually represent the young person at all to the court. They represent either their own preconceptions as an adult and their picture of the issue, or they represent the views of other adults attending to that child. That may be those of the extended family: parents,

uncles or whatever. In fact, the client-lawyer relationship is actually between the child and the legal representative, and it seems to be missing.

One of the things that this was put down to was that we don't necessarily have people trained at law school in the speciality of representing young people. What is happening is that people, for example, who are skilled in family law matters believe that they are as qualified as anybody to represent young people, but they are not. They are completely different issues. Is there a problem here that can be addressed by the legal fraternity?

Mr Staniforth: I think there are two things we need to keep in mind. Take the Family Court, where the role of child representative started and became best defined. There is not a solicitor-client relationship in that role, and it's quite deliberately so.

THE CHAIR: Is that in a Family Court situation?

Mr Staniforth: Yes. If you bring that over to the territory side, in the Children and Young People Act there is a bifurcation, isn't there? You can do one of two things: what we call acting on instructions—"direct representation"—or "in best interests". The best interests model is almost exactly the same as the Family Court's, wouldn't you say, Linda?

Ms Crebbin: Yes. In the family law context, when you are representing the best interests of a child, you follow a series of principles set out in the Family Law Act. Under the Children and Young People Act, you have to nominate whether you are, as a lawyer, acting on the instructions of the child or acting in the child's best interests. If you nominate that you are acting in the child's best interests, again you follow a set of guiding principles set out in sections 12 and 13.

THE CHAIR: Linda, who makes the choice about which path you are going to take—the money or the box?

Ms Crebbin: It is one of those difficult questions. I do some representational work with children in this area. The act says that the lawyer must make an assessment of the maturity of the child and the understanding of the child of the proceedings they are involved in. In every case, that is exactly what they do. I acted recently for a 10-year-old girl, and I acted on her direct instructions in care proceedings. She is a very intelligent, very articulate young woman. Some of the instructions she gave me were quite different from what I thought would be good for her, but they were nevertheless her instructions and so I acted on that basis.

However, there have been 14 and 15 year olds for whom I would not act on instructions, because they have had some form of disability or a significant behavioural problem, which means that they really do not understand. You say to a young client, "I'm your lawyer or your solicitor. Do you understand what that means? I'm going to go to court. There is a person at the court who is called the judge." We use those terms, we don't talk about magistrates. We will sometimes find that a 14 or 15 year old does not really understand what that means. An individual assessment has to be made in every case.

Sometimes, of course, it will be bleeding obvious, because you will have a three year old or a four year old who clearly cannot instruct you.

MS DUNDAS: Is there an accountability mechanism to ensure that lawyers are applying the principles as stipulated by the act when they are acting in the best interests of children?

Ms Crebbin: That is a difficult question. The court is the answer to that. As the lawyer, you are representing your child client in court. Ultimately, you have to go before the magistrate and the magistrate will make that decision.

MS DUNDAS: Is there anybody monitoring whether lawyers are making the right decisions when they say that children are not mature enough or are mature enough?

Ms Crebbin: Second guessing your assessment of that? No. Certainly, as lawyers, we are not trained to make assessments of children's maturity, so there is a question about how we would go about doing that. If I am in doubt, I will look at the material that has been provided in the case. Frequently, there will be material from child psychologists or paediatricians already available, so there are often experts already involved in a case whose opinions you can use for guidance in relation to a child with behavioural difficulties, for example. However, the short answer to your question is no, no-one is acting as a watchdog to oversee the lawyers' assessment in that part of the process.

MS DUNDAS: Do you think there is a role there?

Ms Crebbin: I couldn't say.

MR CORNWELL: Goodness gracious.

Ms Crebbin: That would be very difficult. I would have to think about it.

THE CHAIR: A shake of the head for Hansard.

MRS CROSS: One of the things we have heard—

MR CORNWELL: Solomon has been dead for how long?

MRS CROSS: One of the things that we have heard, Linda, is that there have been occasions when young people have not been represented the way they wished to be represented because the adults assume all the time that they know better. In many cases, that is probably the case, but we are concerned that, at times, things fall through the cracks. The adults all decide up there what is good for the children down here, and the children's wishes are not respected.

Ms Crebbin: Certainly, the ten-year-old client I spoke of earlier would very strongly say to you that her wishes were not respected. That was because the court view was quite different from the instructions that she was giving me and the position that I was advocating on her behalf. I think there is a distinction to be drawn between making sure

that the child's wishes are heard and making sure they are acted on. You cannot always assume that an outcome will be as the child wishes.

THE CHAIR: Or an adult for that matter.

Ms Crebbin: Or an adult for that matter.

MR CORNWELL: That is what I was thinking myself, yes.

MRS CROSS: Could you give us an example?

Ms Crebbin: All right. My ten-year-old child had been removed from the family home following an incident of violence. As the matter progressed, it became clear that she was significantly behaviourally disturbed. She was in counselling and therapy for a long time. As a result of those behavioural difficulties, however, she went through five foster placements in a period of seven weeks. She said quite clearly to me—over and over again—that she had no desire whatsoever to go home. Although a lot of things had been done, everyone was satisfied that the safety issues were addressed, and she herself said she felt quite safe going home, that was not a concern. She just did not want to go there.

She told me that she would much prefer to continue having weekly changes of foster carers than to go home. I advocated that position on her behalf. The court thought that that was not appropriate, having taken into account the evidence of three experts in that particular matter and case workers, and that her best interests were served by a reasonably swift reintegration process, with lots of therapy and support, for her, her parents and the whole family together.

That is an example in which what the child wanted was what I advocated. I know that she says, “Nobody listened to me. My voice wasn’t heard.” She uses that language. What that means is that she did not get the outcome she wanted, and sometimes that has to happen.

Mr Staniforth: Can I raise another facet of that? I urge you to be very cautious about this topic because it is an area of high vulnerability. Just this morning I was dealing with an application for legal aid from a man who wants to have shared residence of his children, who are nine and 11.

THE CHAIR: Chris, could you tell us what shared residence is?

Mr Staniforth: It means 50 per cent of the time, week about.

THE CHAIR: Yes, okay, week on, week off.

Mr Staniforth: He is in the middle of a very big ding-dong about paying child support. Child support is calculated on nights with the parent, and so it would be in a liable parent's interests to, well, as they so quaintly say in court, “get me nights up”. You could be suspicious and think that any application to increase the number of nights would have a very great financial benefit to him. To support their father's application for legal aid, the children have written letters. A letter from the 11 year old says, “I want to live with me dad. He is real good to me. I love me mum to”—spelled “to”—“but me dad teaches

me things that a woman can't." I have just failed in the parental test, by the way, because I did not know there were any of those.

Anyway, the nine year old—

MR CORNWELL: Sounds a sensible young man.

MRS CROSS: How old is he?

Ms Crebbin: He is an 11 year old.

Mr Staniforth: The nine year old also wrote us a letter. "I want to live with me dad"—absolutely the same, with the same spellings and "to" spelled wrongly in it as well. In his application, the father has written that the children are very eager to live with him and he can teach the son things that his wife cannot. I think that is a starker example of what I am getting at. When you start to get into the area of children's voices not being heard, I am sorry to tell you that it is often the case that an aggrieved adult is not heard and that, sadly—

MRS CROSS: They are using the children.

Mr Staniforth: And that is very, very common in this system.

MRS CROSS: Is that because kids do not really know what they want at that age and they are easily manipulated?

Mr Staniforth: I do not think we are as nice as we get older. Children actually do want to assist.

Ms Crebbin: They want to be agreeable and please everyone, don't they?

Mr Staniforth: Yes.

MR CORNWELL: Chris, you said at the beginning of this that you felt that there was a problem with the expectations of people out in the community about what lawyers could do. It appears to me that a lot of the criticism that we have heard has been levelled at the legal profession and its treatment of children and such like. Could you elaborate a bit more on what you were saying? Is it also true that there is a tremendous ignorance out there as to what you can do in these circumstances? Do you have any suggestions as to how that could be overcome?

Mr Staniforth: This is a very personal view, but I must say that it is one garnered from 20-odd years of doing this kind of work. There is a very unhealthy tension between—how can I put it?—the publicly funded child-care services and the court system. Very often, the criticism that we catch and that our office catches can, I think, very easily be translated into "we didn't achieve an outcome that a senior social worker would have liked us to achieve."

Ms Crebbin: When you are talking about child-care services, are you talking specifically about child protection services?

Mr Staniforth: Not exclusively. As does every human being, someone who is involved in a case will have a paradigm of the outcome: “What I think is best in this case is A, B and C.” If we don’t achieve that, but achieve D, E and F, that creates a tension. I think some of that tension results from of a lack of understanding of what a legal system can deliver. As our chief magistrate has said since I was a much younger person than I am now, no legal system in the world can click its fingers and resolve 13, 14 or 15 years of bad parenting. You can’t come to us and say, “Fix little Johnny up.” We don’t do that. That is not our major skill, if we have any at all.

With respect, what you have to accept, and what our community has to understand, is that it is no good trying to make scapegoats out of the system that is dealing with one very small part of this child’s life, and perhaps an even smaller part of the related adults’ lives. The level of frustration that you see almost daily occurs because, as I say, people expect suites of solutions of a legal system that are not there. I did Children’s Court work for 12 to 15 years. If we had perfect parents in Canberra, there would not be a Children’s Court.

MRS CROSS: Do you think that the court system then needs to be modified to more fully take into account the interests of the child, given that we do not have perfect parenting and we are going to have problems until all parents are educated about how to be good parents? Do you believe that there is room for the court system to be modified?

Mr Staniforth: I know the Children’s Magistrate is very interested in looking at the New Zealand family diversion scheme. I must say, I think I am with him on that. There is an alienating aspect in criminal law—your lawyer stands up there and gets a real flogging on your behalf. That is what I enjoy about being a lawyer, you get flogged in court because of what the customer did and then you come out and get flogged because—

MRS CROSS: That happens in the Assembly, too, don’t worry.

Mr Staniforth: Is it the same? Children can sit through criminal proceedings in which they have been accused of some quite serious things and really not be players in them.

MRS CROSS: Then is there room for modification in the system?

Mr Staniforth: Yes, I think there is. I would want to see three or four things. One is understanding by children that, when they have done wrong, they have done wrong. As a community, we expect our criminal system to flag with people that we do not approve of what they did. Having little Johnny sitting in court, looking out to see if it’s raining and listening to the lawyer jabber away, doesn’t achieve that. What might achieve that, in the right case, is some form of engagement in a conferencing system. As I say, the New Zealanders have been doing this now for 10 or 15 years and, I understand, very well.

This isn’t shaming that we are talking about, which may be a disaster in the wrong case. This is much more as though we are saying, “How are we, Johnny, going to deal with these behaviours that we say are unacceptable?”

Ms Crebbin: “And how are we, as a community, going to work with you so that you take responsibility with us, as a community, for making sure these things don’t happen again.” It is more a focus on community responsibility for wrongdoing that incorporates the young person.

MR CORNWELL: Why is that?

Ms Crebbin: My understanding of the reason that system was developed in New Zealand was that these are the ways in which Maori families have traditionally worked together, and that this form of conferencing grew initially from their own sense of community, and community responsibility for all within the community. Certainly, the reports of it are so interesting that they are worthwhile considering.

MR CORNWELL: The reason I asked is, it seems as though we are blaming them again, whoever “they” might be.

Mr Staniforth: If they are found to have done something wrong—

MR CORNWELL: No.

Ms Crebbin: It is this nebulous “them” that you are talking about.

MR CORNWELL: Yes, this nebulous “them”, “they”, the system.

MRS CROSS: The system is made up of people and I suppose the only way to fix the system is to talk to people.

Mr Staniforth: If anything, I thought that the Children’s Magistrate’s thinking might go the other way: he might be saying that, for the first time, “you are going to have to play a part in this. It isn’t them out there: you’re the one. You’re here today, having knocked off the bike from the Woden Plaza. It isn’t some foreign lawyer who you’ve only met for half an hour, standing up there doing what he or she is paid to do: it’s you. “

MR CORNWELL: I may have misunderstood Linda, in which case I apologise, but it just seemed to me this involvement of society and the offender—

Ms Crebbin: Yes. I think what I was focusing on was not so much the community taking responsibility for what has happened, but for what the community is going to do with this child to make sure that these things don’t happen again. It’s more a focus on the future.

THE CHAIR: Thank you. I picked up a bit on that too. We are talking about kids who have broken the law, and are facing the consequences. I know a very nice young bloke who is in Quamby for knocking off 23 cars. He’s a lovely bloke and his problem is systemic in his family. His brother is very good at it and his father is even better. There are things such as the Right Way program—I have forgotten the correct title—in which young car thieves are taught how to restore cars, and they gain a qualification. That is a great idea.

Going back to your concept, Chris, you were saying that they have to understand that their behaviour is not accepted by society. The families are not actually educating the kids about what is right and wrong, and the schools aren't doing it either. The question before us is how can we introduce this subject so that kids in their middle to late teens, for example, are aware not only of the rights and wrongs and society's acceptable standards, but also of their rights before the law.

One of the commonest things I hear in the youth centres I visit is 16-year-old kids saying to me, "I know what my rights are", and they don't. How can we get both sides of that argument across to these people? Are youth centres the idea? Is there any other mechanism that strikes you?

Mr Staniforth: I know teachers tell you that school curricula are just so full they couldn't possibly put another thing in, but I can't see anything much more important than understanding how we live in a rule of law. You will remember how I was talking about this tension when the adults fight about the outcome. I think a lot of that is the result of having generations who simply haven't understood what the legal issues are that affect them. It is a simple truth. I think schools are the places where some basic exposure should happen.

THE CHAIR: Could I suggest to you that many adults do not have a clue what their rights and responsibilities are concerning the law either? Of course, we are seeing the result of the lack of basic training in this area at school level. It would be a bit tough to expect the teachers to pick it up quickly, because they wouldn't know either. Do I hear you suggesting that we should be talking to people in tertiary institutions and teacher training institutions and that sort of thing? Some of the postgraduate training specialities are teaching. That is where we should look, and we should recommend that our community starts giving something again.

Mr Staniforth: Years ago we tried a pilot program that had a legal studies component and looked at this question. By the way, it was called Rights and Obligations, because you have to talk about the second one just as much as the first one. It got swamped in the pressures that then applied to schools. I used to be on the accreditation panel for the legal studies courses in all the schools. As these courses were made more tertiary friendly, this kind of program fell out the back end, and so they had to have a theoretical construct—

THE CHAIR: I have been on school boards quite a lot and it seemed to me then that the accent was more on abseiling than on civics, as it were. What I am hearing is that perhaps we ought to be saying to the education system that being a good citizen is far more important than being able to abseil. Perhaps it is as important as being able to speak our language properly and add up.

Mr Staniforth: One of the things we found out is the enormity of the range of pressing legal matters that face people under 18. I was trying to say before how complicated it is to determine the precise law that affects them. They are heavy legal consumers, and they are either knowing or unknowing. Most, as you say, are unknowing. It is systemically abusive, I would have thought, to send our children out into the world of mobile phones, buying cars, and families, without this training. We have a number that would surprise you—and I have forgotten it as I am talking—of people under 18 asking for legal advice

about contact with their own children. They are living in a world of substantial legal activity and they are told nothing about it.

MS DUNDAS: Having programs in schools will address one end of the problem but it is clear, from the evidence we have received, that a lot of people who are in the youth justice system do not go to school, full stop. How do we then fix the problem from the other end, for people who are not getting education? Are there changes that can be made through the legal processes—besides the diversionary conferences that you were talking about—to ensure that they get the information that they need, and gain that understanding of their rights and obligations under the law.

Mr Staniforth: Just before I hand over to Linda, I want to say that what upsets me about that kind of thinking is that it is not much good looking at us for legal advice once you are in Quamby for your 23 car theft convictions. While I am totally with you on the point, what I am saying is that, right now, we don't have any solutions at all. There is no capacity in any system, outside the family, for that child to gain any understanding of what is right and wrong. There are many in our community who say that that is the role of a family. I think I would say that. If the family is failing, the options are very difficult—you start to invade family space.

MS DUNDAS: Because, as you said, we see a Tweedledee and Tweedledum partnership between the care and protection system and the youth justice system, that seems to indicate that there are a number of systemic problems in the care and protection system that prevent it producing the desired outcomes. I am seeking your advice, as legal experts, on how we should wave the magic wand to fix these problems.

Ms Crebbin: Gosh, wouldn't that be a wonderful thing? I don't know that we have any answers here. A very interesting longitudinal study has been produced recently by Griffith University. It is an enormous study of whether there was a correlation between children's contact with the child protection scheme and juvenile offending, so it was a study of the risk factors for juvenile offending. My understanding of this is that it is unique research. It came up with a significant correlation between reports of neglect—as distinct from abuse—and juvenile offending.

There was also some correlation between reports of sexual abuse, self-harm and offending behaviours that are self-harming in nature, such as arson, where there is a personal risk for the offender. However, with neglect, there is quite a significant correlation with violent offences and property offences. The report goes some way into looking at that and talks—as have a number of other reports—about the very great importance of early intervention. This is often pre-school-age intervention to ensure that children are being cared for in a way that gives them a sense of belonging to a community, because it is from that that a sense of responsibility to that place grows.

Maybe there are some answers to be found to the questions you are asking in that type of research. I don't know. Did you look at that?

Mr Staniforth: Yes.

THE CHAIR: Can I just pre-empt your answer for a second because I am conscious of your time constraints? When you have finished responding to that I would like to move on to the issue of the possible commissioner for children and youth.

Mr Staniforth: Just quickly, all that I would add is that, again, I am not sure it is the role of the law at that age of human development. The law is something that adults deal with in rules and regulations, and by coordinating our behaviour. As I think Linda was indicating, at a young age you are looking at something different, aren't you? It is a very different concept. It is about belonging, loyalty and love and such issues. Certainly, as I think this research shows, if those basic building blocks are not there, then the risk increases. I am not sure that there is a legal solution for such a problem at the early age. You would think, with all our social science expertise, that we should be able to do this much better than we are doing it.

THE CHAIR: In the next couple of minutes, I wanted to canvass your thoughts, and possibly your instincts as well, on whether we should be having such a position as a commissioner for children and young people. The position might be a stand-alone statutory position, or it might be integrated into an existing statutory position, which would be beefed up with legislative powers and resources. You may think that, instead, the current advocacy and audit roles that exist within the range of statutory offices that we have at the moment are sufficient for the process.

Ms Crebbin: Let the record show that we looked at each other significantly to work out who is not going to answer.

Mr Staniforth: I have to be frank and say to you that I think that one cannot keep handing this kind of work to the public sector. We are a smallish city, the equivalent of Newcastle. I wonder how many more senior public servant roles you can cram into this kind of work. The interstate experience of which I am aware concerning children's commissioners is that, sadly, they become captured by departmental agendas.

We were talking about Solomon before. Someone has to take responsibility for the work of the children's commissioner, one assumes, and that person will effectively be controlling the children's commissioner. Even though I know we are safe from defamation, I am sure we are all aware of one very harsh criticism that was made of a children's commissioner on that very theme. An awful lot of money in this town is going into this area of work. We are big spenders of money in this area.

MS DUNDAS: I was going to ask, if the criticism is that this would create another level of bureaucracy in a small town, what then needs to happen to empower young people as owners of their own rights, but also to promote this to the wider community—I think the line we were told yesterday was “making our city more child friendly”. How do we do that if not with another level of bureaucracy and an office that is promoting and involving young people? Do we give everybody a sticker saying “young people are great”? What else can we do?

Mr Staniforth: The one thing we do well in this town, but maybe not enough, is cooperative ventures. We tried very hard unsuccessfully, I have to say, to do a joint effort with the AFP about young people in public spaces. That is a massive issue in this

town, as you know. Older Canberrans are often intimidated seeing young people in public spaces, and there is almost a view that young people should not be there.

How do you handle that? You handle that through education. We were planning videos, community-based meeting and education sessions, and protocols with general duties people in the AFP about how young people and the police will interact on the street. Having said all that, we missed out on the money, so we did not do it. I would say the answer is in really boosting cooperative ventures.

MS DUNDAS: Linking together what we already have.

Mr Staniforth: Yes.

Mr Crebbin: I might have a different view but I am not certain, which does not sound very helpful. Several years ago, I was doing some work which caused me to look at the work of Sally Castell-McGregor, the children's commissioner in South Australia, and of a person whose name I have forgotten in New Zealand, who was also the children's commissioner. That work looked to me, as an external observer, to be excellent and exciting, and it did give children's issues a significant public profile.

Those researchers were seen by young people as allowing them to have a focus and a voice. However, I felt very strongly that a large element of those positions was the personality of the people in the roles, rather than the structures that lay behind their offices.

MS DUNDAS: We are hearing that a lot.

Ms Crebbin: When I look at the structures that we have already in the ACT, I think, as Chris does, that most of the framework appears to be there. We simply have to consider how it is working and how it is used. I think there may be a lot of waste involved in setting up brand new structures. I would have to go away and think about that question a bit more before I could give you the magic answer, as is the case with most of these questions.

THE CHAIR: If a magic answer comes to you in the middle of the night, would you be kind enough to let Jane Carmody know? We would be delighted to have it. We are struggling with that.

THE CHAIR: Members, we have only three minutes left before the good CEO turns into a pumpkin, so do you have a final question?

MS DUNDAS: Can I put a statement to you that was put by somebody else in their submissions and ask you to respond? Young people are not regarded as mature or responsible enough to vote until they are 18 years old, yet our youth justice system holds them responsible as young as 12 for criminal actions. Do you have any comment on that statement?

Mr Staniforth: You are correct in that you can be much younger than 12.

Ms Crebbin: I am not certain what is behind the statement. Is the statement maker suggesting that the voting age should be lowered or that the age of criminal responsibility should be raised?

MS DUNDAS: I think they are making the point that we put different standards regarding rights and responsibilities on our young people.

Ms Crebbin: I think it would be a wonderful thing for my 14 year old to vote. She would vote much more sensibly, and with much more consideration, than many adults.

Mr Staniforth: It is a very powerful thought. I can only say that, just in the years I have worked on this kind of law, the explosion of legal issues relating to people in their teens, in particular, has been enormous. Yet, we say to those people, who are now a very big part of our economic community activity, “You do not have a role in any of the levers, the movers and such things.”

MS DUNDAS: The decision-making.

Mr Staniforth: Yes.

Ms Crebbin: Putting aside the voting issues—I was being a bit frivolous there—we certainly impose economic responsibilities on young people at an increasingly young age, not just with their mobile phones but with their keycards and bank account accesses. Yet we—

MS DUNDAS: We do not treat them as adults, yet we ask them to be adults.

Ms Crebbin: Yes.

MR CORNWELL: That is not mandatory.

Ms Crebbin: No.

MR CORNWELL: Parents are giving their children bankcards and things of this nature, presumably on the assumption that they will accept those responsibilities, but then we get into the law.

THE CHAIR: Roslyn is pointing out quite clearly the inconsistency in the approach to young people. We have young people who are given jobs and paid junior wages but, if they diddle the till, they will be treated as if they are adults—instant dismissal or being charged before the law. That sort of social mentoring does not necessarily go on in the workplace. We have a dichotomous approach and it is something that has been challenging for us, but I suspect it is a greater challenge for the courts.

Mr Staniforth: I have to keep stressing that lawyers are very blunt instruments and the law is very blunt. It does not have the finesse that attitudinal issues and educational issues have. I am still trying to think of the best answer to that observation. I think it has a lot more to do with how we adults interact with our younger people, than it has to do with how the law works.

If a person under 18 is charged with an armed robbery then that is a very, very serious matter and, in my mind, it should bear all the legal consequences that I would want it to bear, as that person in the community. I don't much mind, if you rob me using a gun, whether you are 16 or 60—we don't rob each other with guns.

You can say that. You can then say, but then shouldn't somebody who is 16 have a say in those areas that affect their economic life. I can feel comfortable with that. At the criminal end of it—and the chair was talking about the criminal end—I am afraid I would say, “Yes, you will get a legal solution if you want to commit an armed robbery.”

THE CHAIR: I am aware of your time constraints. We thank you very much for sparing us the time that you have. It has been most useful and it will add to our difficulties. Thank you very much.

Mr Staniforth: I thank you for being so thoughtful about the time. I am very appreciative.

KEN PATTERSON was called.

THE CHAIR: Thank you very much for coming. As you know, we are doing an inquiry into the rights, interests and wellbeing of children and young people. I am obliged to read this notice out: 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 action, 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. You have heard all that before.

You will be aware, also, that the proceedings are being broadcast round the building and other public services offices and a member of the fourth estate is to your immediate left. What we would like to do, if it is okay with you, is, firstly, to invite you to make an opening statement, if you feel so inclined, and just see where it takes us with questions and things we have gleaned. Before you start, I ask you to identify yourself and your position for the purposes of Hansard.

Mr Patterson: Thank you. I am Ken Patterson. I am the Community and Health Services Complaints Commissioner. I don't have a great deal, I suspect, to add to your deliberations, but I did note in the letter which came in inviting me to come that there are several issues that you seem to be interested in, so I thought I might make some quick comments in relation to those issues in case it is at all helpful.

The first issue mentioned in your letter related to the notion of the appointment of a commissioner for children and young people. That is something which I cannot say very much about, because it is not a matter which I have investigated thoroughly. My only comment, I suppose, is that I note that many of the functions that might be carried out by such a person are already carried out at the moment by the Office of the Community Advocate and, as a general rule, I suspect it is a good idea not to introduce too many new organisations if we are in a position to ensure that existing organisations can extend their value.

The second issue related to the role of existing advocacy and statutory oversight agencies, which I assume included me, so I thought I should make a few quick comments in relation to the work of my office when it comes to children. I am able to receive complaints about health services and services for people with disabilities where those services are provided, or unavailable sometimes, to children or young people. I can receive, assess, conciliate and/or investigate those complaints.

THE CHAIR: You say that you can receive them. Do you receive them directly from young people, from the families representing young people or both?

Mr Patterson: An interesting aspect of the legislation setting up my office is that section 21 of the Community and Health Services Complaints Act talks about who is allowed to lodge complaints and that section allows a child or young person to lodge a complaint; it doesn't prevent them from doing so and I am always happy to receive a complaint and accept it from a young person directly.

The same section also allows other people to lodge complaints on behalf of children or young people, specifically people under the age of 18, in certain circumstances. If it is difficult or impossible for a child or a young person to lodge a complaint themselves, a complaint may be lodged on their behalf by a parent, by a legal guardian, by a person appointed by that person—those are the main ones that apply here—and also by a person whom I appoint with the authority.

MR CORNWELL: How many children would lodge complaints per annum?

Mr Patterson: Very few, I must say. I could count them on one hand. But it is an important principle; for example, I can recall one case where a parent wished to lodge a complaint about a service provided by a young person and my impression was that the young person might not have wanted to lodge the complaint at all. There was a difference of opinion between the child and the parent as to what it was all about. In that case, the proper action for me to take was to get in touch with the young person and find out what they wanted.

The other thing to say is that in general, if complaints are about young people and it is possible to involve them, even if I accept a complaint from, for example, a parent, I think it is proper that I keep in touch with the person who is the consumer of the service and see what their concerns are. I think, in response also to what you are saying, that it might be a good idea to publicise more widely the fact that children and young people can lodge their own complaints with us.

In terms of health services generally, the standard of health care for young people is relatively high and the expectations that parents have in relation to health services for children are very high; they are very fussy. Nevertheless, the number of complaints that I receive about health services for children is not that high. It doesn't suggest that health services for children are a major issue compared to others.

Nor are the complaints I receive about health services for children different in any significant way to the complaints about services for adults. There are a few things that I have noticed a little bit more often when I have had a look through the last 60-odd complaints I received about children. A lot of them are about the same sorts of things. There were perhaps two or three more about dentists, which is not surprising, and a couple more about chemists and prescription areas than I might have expected. Perhaps medication for children is harder to recognise.

One particular thing that was stronger is that we often get complaints from parents if there has been a failure to diagnose a child. People expect that the diagnosis will always be right. This doesn't mean to say that the diagnostic services are poor. It just means that when things go wrong people get very worried about it, especially if there has been a failure to treat somebody quickly.

MR CORNWELL: Meningococcal seems to be very popular at the moment in that respect.

Mr Patterson: Yes. That hasn't been the subject of any complaints to me, but that is the sort of thing that people are inevitably concerned about. There may also be a few more complaints about what you might call the attitude and manner of health service providers. People expect their children to be treated with respect and, if it doesn't happen, they let us know.

A couple of things that I have mentioned in investigation reports in the past relating to children might be worth mentioning also. As you might be aware, I have just finished an investigation into certain aspects of mental health services in the ACT. In relation to that, I became aware of the limited residential facilities for young people who are mentally ill. There are also some resource limitations caused mainly by recruitment difficulties for staff.

An issue that came to my attention there was protection for the children of people who are mentally ill, where those children may be at risk of harm because their parents, through their own mental illness, are unable to give them adequate protection at the time. We talked in that report about the importance of assessing the child of a person who is mentally ill, where the child is being looked after by that mentally ill person. That is not to say that we discourage mentally ill people from having access to their children, but it does mean that we have to make sure that their children are safe while they do that.

THE CHAIR: Is that happening at the minute? Are you getting a sense from your review that that is an area of need on which we need to get somebody to focus a little bit more heavily?

Mr Patterson: Yes, but it is in my report which I assume the minister will be addressing in the next few days. One other thing that came out of that was the difficulty that sometimes arises when you have limited resources which are expected to be used to address the needs of people who are moderately or severely mentally ill, the most seriously ill people, and this includes children who may be psychologically disturbed or distressed.

That policy gets to be a problem in relation to children because often the child may not be in too difficult a situation at the moment, but may be likely to progress to one unless there is adequate early intervention. So it is an area where to say that we will only treat the most seriously ill children might mean that we end up not treating a number of children who really do need treatment now, because it is a very valuable investment in their future. That is the reason for adequately resourcing mental health services for children, of course. I don't mean by anything I have said to imply that mental health services for children are unsatisfactory; only that these are some areas of concern.

A couple of other things I have noted in other complaints in the past. Services for children with autism spectrum disorder I raised about four or five years ago. There have been some changes and I haven't had similar complaints subsequently; but I don't know, because I haven't investigated, the extent to which those services have improved.

Another thing I have noted is the situation where people are encouraged to take children to the emergency department at Calvary Hospital, which is okay until they need hospital admission, at which point they always have to be transferred, and that is a difficulty that perhaps somebody needs to think about a bit more.

I don't think I will say too much more. The other things are here and there and not in enough numbers to mean much. In relation to services for people with disabilities, of course, the usual issues that have come to my attention about children relate to access to services. If they are living at home, it is often difficult to get sufficient support for a severely disabled child living at home with their family. If they do need residential care, it is also often difficult to find.

The big issue in relation to the rights of children in health care is the issue of consent. A couple of Australian states, New South Wales and South Australia, actually have legislation that talks about the ability of children to consent at certain ages to certain forms of medical treatment. The ACT, like other Australian states and territories, relies on the common law, which is something I actually agree with, so the ACT uses what is known as the Gillick principle, which is based on a UK case from 1984 which states that, provided the patient is capable of understanding what is proposed and of expressing his or her own wishes, I see no good reason for holding that he or she lacks the capacity to express them validly and effectively and to authorise the medical man or woman to make the examination or give the treatment which he or she advises. In other words, if the child can understand what is going on, the child can consent to treatment and the age is not an issue. I think this is an important principle.

THE CHAIR: Does the converse apply?

Mr Patterson: Yes, so that if the child cannot understand and express their view, then the child is unable to consent and somebody else has to consent on the child's behalf.

THE CHAIR: And if a child can understand and does not give consent, can that be overridden by the adult, by the parent?

Mr Patterson: No, the child has the capacity to consent and has made the decision. It is important, I think, because it is flexible. It may well be, for example, that a child of 13 will be able to consent to straightforward treatment but may not understand enough about a complex medical condition, and children will vary. One 13-year-old will be able to consent to something and another 13-year-old will not understand the issues behind even the same treatment.

THE CHAIR: The issue that comes to mind is an issue that I had as a young person when I had an accident. I went off and had splints and all that sort of stuff and I was required to have a tetanus injection. I was quite happy to have my joint pulled back into place and plaster put on. but I wasn't going to have a bar of the tetanus injection. In that instance, I fully understood exactly what was happening and said no, but that decision was then overridden and the tetanus injection applied. Is there an issue there?

Mr Patterson: There would be. If you were competent to consent to that, the implication of the competent consent is that you were competent to refuse treatment, and that is the consequence.

THE CHAIR: That is scary.

MRS CROSS: They forced you to have it?

THE CHAIR: The tetanus injection, yes, fortunately.

MRS CROSS: Against your will?

THE CHAIR: Yes, but they were right. I exercised quite clearly and very loudly my lack of consent, but it was the correct medical thing to happen. It was overridden by my parent.

MRS CROSS: Oh, you are talking about when you were young.

THE CHAIR: Yes, but hang on a second. We are talking about children before the law. I was 12, so there was absolutely no doubt I knew exactly what was going on. The worry I have is that such a thing could happen again.

Mr Patterson: There are a couple of things that should happen, presumably. One is that the doctor who is recommending the treatment makes sure that you do understand it and can understand it. If the doctor believes you can't or don't, then the doctor would be entitled to seek consent from someone else. That would be the proper way to go about it.

So, if it was a significant risk to you and the doctor felt that you didn't understand the risk and that's why you refused, then the doctor would have an obligation, first, to talk to you and then potentially to talk to someone else. This sort of issue often arises with young people who seek contraceptive advice or something like this, when they are reluctant to talk to their families. I think it is good that children can go and seek the advice, because then the person from whom they seek the advice can talk about things with them, such as: do you need to talk to your family about this, can you talk to them about it, or whatever? But if there is a significant ongoing risk to the child if there isn't something done, then the commissioner has the opportunity to deal with it, provided the child is old enough to understand what it is about.

MS DUNDAS: I also wish to ask about medical consent. The Office of the Community Advocate told us in their submission about their involvement in the late 1990s in how the protocols for sterilisation and special medical procedures were being applied to children and young people, including children and young people with disabilities. That was in the late 1990s. Do you have any comment on how those issues are now affecting young people with disabilities who might not be able to give informed consent?

Mr Patterson: I have no recent experience of issues in that area. I do recall one from a number of years ago. That is an area where people cannot give consent on behalf of a child or a disabled person; the decision has to be made by somebody else.

MS DUNDAS: So it is not an issue in your experience.

Mr Patterson: It may be an issue, but it is not an issue that has been brought to my attention in recent times. It was some years ago.

MS DUNDAS: Have you received, or can you tell us if you have received, many complaints against youth specific health services?

Mr Patterson: Yes. I can tell you I have not.

MS DUNDAS: You have not. Great.

Mr Patterson: Almost everybody is on my list by now, but I cannot recall any complaint about a youth specific service. There might have been one or two in relation to Child and Adolescent Mental Health Services, but they were not significant.

MRS CROSS: What about an individual of those services? Have you had complaints about individuals?

Mr Patterson: Individual service providers providing specialist services to children?

MRS CROSS: Yes.

Mr Patterson: I would have received one or two complaints about paediatricians, but the number of complaints about paediatricians is much lower than the number of complaints about people in other specialities.

MRS CROSS: What is the problem with the paediatricians? What are they doing wrong?

THE CHAIR: There are only one or two.

Mr Patterson: I think my point was that the number of complaints about paediatricians is lower than for other specialities.

MRS CROSS: I understand that.

Mr Patterson: So the complaints that came to my attention didn't make me feel that there was a systemic problem with the paediatricians.

MRS CROSS: Right. Just bedside manner problems.

Mr Patterson: There were issues in particular cases, as always happens, so I suspect they were diagnosis problems.

THE CHAIR: You mentioned before that one of the issues was young people's understanding of processes and their access to information about consent and that sort of thing. You said that perhaps we could advertise, for example, that people can access your office if they have an issue. In fact, it may very well be that a number of people have not lodged complaints or concerns with your office due either to a lack of awareness or to a lack of belief that they actually have a right to approach you as an individual.

Mr Patterson: Correct.

THE CHAIR: I guess what makes me curious is what mechanism we can introduce that can address both of those. We can stick up signs in youth centres and we can stick up signs in schools, but as, I think, Roslyn pointed out earlier, some of the kids who need the services don't go to school or youth centres.

Mr Patterson: I think you have articulated the problem very well.

THE CHAIR: We are hoping that things such as the minister's youth council will be able to throw up some sorts of suggestions as well, but I just wanted to have your thoughts.

Mr Patterson: It is difficult, I guess, in my position to make too big a campaign in relation to any particular group when I should be there for everybody. But it is certainly a good idea, if somebody is passing around information to young people about what their rights are, where they can get advice and so on, to make sure that information about my office is there so that they know that they can come along and lodge a complaint themselves and they can raise the issue. They will certainly get a hearing and we will do what we can for them.

I recall some years ago now when I was working in Victoria in a community participation project, a couple of the communities we had there did things like set up cards which they distributed to young people in lots of different places. The idea was to be selective and find just a very small amount of very valuable information about who you might contact for different things. Things like that may be valuable because they can be easily distributed anywhere and that is the sort of thing that I guess you had in mind.

THE CHAIR: Anything from standing on a street corner with a big cow bell. I don't know the answers. It seems to be a recurrent theme.

Mr Patterson: It is the sort of thing that people expect adults to do, isn't it? Young people expect adults to make complaints. It is not the sort of thing they do, and they don't often expect a good response if they try.

THE CHAIR: There is definitely that. The other thing, of course, is that there is the natural suspicion of young people with the system which is represented to them by an adult in the system and therefore the kind of response is that we don't understand what they are thinking, so there is a reluctance to say, "I know my rights and you can help me, so I want to talk to you." I don't know how to break down those barriers.

Mr Patterson: One of the other things that we often do, if we know about somebody who wants to make a complaint, is that often we will go to them. We don't expect them to come to our office block in the city and so on. We are happy to talk to them wherever they are. If that is in relation to a youth service or whatever, we can do that. But they still need to make the first contact, unfortunately. Advocates for young people, of course, can certainly contact us as well. Perhaps we should be talking a bit more to them so that they are reminded that people come to us.

THE CHAIR: Okay. Thank you very much for sparing us the time, Ken. I appreciate it very much. You have added to our knowledge and our challenge.

CHRISTHILDE HAASE was called.

THE CHAIR: Thank you for coming to talk to us in our inquiry into the rights, interests and welfare of children and young people.

I have to read the card in front of you. 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 are protected from certain legal action 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.

These proceedings are being reticulated around the offices of members of the Assembly and certain senior public servants. We also have present a representative of that esteemed publication the *Canberra Times*.

We invite you to make an opening statement before we ask questions. I ask you to identify yourself and state the organisation you represent.

Ms Haase: My name is Christhilde Haase. I'm representing Mr Ron McLeod, who is the ACT Ombudsman.

I would like to talk to you about the Ombudsman's activities in relation to children and young people over the past couple of years. The Ombudsman's office has two major functions. One is to improve government administration generally. We do that by making recommendations on changes to the policies and procedures of government agencies or sometimes changes to the law. We generally identify issues through complaints we receive or through our own motion investigations.

Our second role is the investigation of complaints about the administrative actions of ACT government agencies. Where we find that those actions have been defective, we can make recommendations as to remedies. Those remedies can include anything from an apology, an explanation or expediting a process that a person is going through at the moment to perhaps waiving a debt or even asking for a compensation payment. So it's a fairly wide range.

THE CHAIR: Do you only recommend, or can you direct as well?

Ms Haase: No, we cannot direct. We can only make recommendations to the government departments, and hopefully most of our recommendations will be taken up.

THE CHAIR: So if they don't accept your recommendations, you say so in your annual report?

Ms Haase: We sometimes do that, yes. But we do not have the authority or the power to make directions or to ask for changes to be made.

I'd like to give you a brief overview of a couple of own motion investigations that we have done in the past. For the record, I will leave with you copies of additional information. The examples are in those copies.

In 1997 we issued a report looking at the interaction between the AFP in their community policing role and young people. In that report we noted some criticisms, and we found that there were sometimes breaches of the law as it was then, particularly the then Children Services Act—for example, interviewing children without parents being present, detaining children without notification that they had been detained, or searching children and young people and searching their possessions. We also had complaints and criticisms about unnecessary use of force or unnecessary use of handcuffs, about unnecessary and unlawful taking of photographs of young people, about assault and about the general manner, behaviour and attitude of police officers towards young people.

THE CHAIR: Did you get anything on fingerprints being taken?

Ms Haase: Not in that inquiry. At that time we stated that young people in particular are vulnerable in their dealings with police, as they may act without thinking and without fully understanding the consequences of their actions; that they may have difficulties withstanding pressure from people in authority, such as police officers; and that they are more likely to have difficulties understanding legal procedures.

We made several recommendations to police in relation to practices and procedures when dealing with young people. For example, we recommended that the police develop best practice guidelines for all interaction between police officers and young people, and we recommended reinforcing correct procedures and legal obligations under the legislation, which is now the Children and Young People Act.

MS DUNDAS: Were those recommendations taken up?

Ms Haase: Yes. All those recommendations were accepted by police. Implementation takes a little while. The recommendations have been implemented, but practice takes a little while. Another recommendation we made was for continued training and education of operational officers.

THE CHAIR: What you are saying is that we have a bunch of systemic issues and a cultural issue at the same time. The systemic issues have been addressed and are continuing to be addressed over time. The cultural issue still leaves you with a little bit of concern.

Ms Haase: It might take a little while.

THE CHAIR: Is that being progressed at a satisfactory pace?

Ms Haase: We are continuing to monitor the situation. We are identifying different systemic issues as we go along. We are currently looking at issues such as unlawful arrests, access to legal representation, misuse of authority, and the treatment of young people with the police, which are part of the culture you were talking about. Most of those issues seem to be based on misunderstandings and can be conciliated very quickly.

But their coming up over and over again in complaints is a bit of a concern to us. We're continuing to monitor those sorts of activities.

THE CHAIR: Do you get any feeling for how we might stack up against other police forces in this sort of cultural approach to young people?

Ms Haase: I think they're trying very hard to work with young people, and in most cases I think they're doing a very good job.

MS DUNDAS: The inquiry that you're talking about took place five years ago. What mechanisms do you see being put in place to address the need for cultural change?

Ms Haase: All of our recommendations were accepted, including those on the education and training of officers. We are no longer getting a large number of complaints in those areas. We still do get them occasionally. There will be the odd officers whose comments may lead to a misunderstanding, but they are certainly no longer in the quantities we had before, so I would suggest that there has been a marked improvement in their performance.

MR CORNWELL: Do they have any opportunity for counterclaims?

Ms Haase: Counterclaims in what sense?

MR CORNWELL: If somebody makes a complaint to the Ombudsman, is it possible for the person complained against to counterclaim?

Ms Haase: Absolutely. That is what is happening. We do not investigate 99 per cent of complaints against police ourselves. They are investigated by the integrity investigation section of the police. The police are investigating and giving us a report of their investigation, and we are looking at whether or not we believe they have done a thorough investigation of the matter. In that process, the officer against whom the allegations have been made has ample opportunity to tell their side of the story as to what happened or what didn't happen, to have witnesses or to make statements in relation to incidents.

MR CORNWELL: If the officer is found to have committed a breach, what happens?

Ms Haase: It depends on the seriousness of the breach whether it is a disciplinary action, a simple warning or a counselling session with the officer. It would be up to the AFP to identify.

MR CORNWELL: If the counterclaim is upheld, what happens?

Ms Haase: If the counterclaim is upheld in the sense that the police officer was correct, we say that the complaint was unsubstantiated, and we close the complaint.

MR CORNWELL: There is no reference to the complaint being mischievous, vexatious or anything like that?

Ms Haase: We can do that if we well and truly believe and have evidence that it may have been a vexatious or mischievous complaint.

MR CORNWELL: Has that happened?

Ms Haase: It can happen, but most of the time it is a genuine misunderstanding of what may have happened—once you explain the situation. It's usually resolved through a conciliation meeting where people get together and talk about what happened and people can understand why somebody might perceive a certain comment in one way or another. That usually works well. A lot of complaints are resolved through conciliation.

We received a number of complaints about the Quamby youth detention centre in 1998 and 1999. That was shortly after the tragic incident at Quamby in which a young person hanged himself. We looked at some of the policies and some of the procedures at the detention centre, and we recommended the instigation of more detailed procedures for professional assessment of the psychological needs of young people as they came into the centre, straightaway on admission rather than waiting for that.

We also made recommendations on adequate records on the behaviours and on the various needs of the residents. At the time we also made recommendations on the content and delivery of the training and on educational problems at Quamby detention centre.

All these recommendations have been implemented over the last two years, and there have been changes, with Quamby moving from the department of education to the department of corrections and back to the department of education. Probably within the next couple of months we will follow up with another visit to the detention centre to find out how things are going. A good sign is that, compared to a couple of years ago, we have very few complaints now about the Quamby detention centre, so hopefully conditions there that gave rise to complaints have been rectified.

THE CHAIR: Do you think having the administration of a youth detention centre in an educational setting as opposed to a correctional setting is partly responsible for the lack of complaints to your office?

Ms Haase: Given that it was with corrections in past years—

THE CHAIR: I don't mean the corrections people themselves. One of the reasons for the change was the mindset. One is a corrections mindset, which is about behavioural modification, whereas education is about prevention and education. I'm curious about whether your instinct tells you that the placement of Quamby in education is right.

Ms Haase: We get a fair number of complaints about the Belconnen Remand Centre, so I don't think it makes much of a difference whether the centre is placed within the correctional setting or the educational setting. It might make a difference to the mindset and whether you're looking at behavioural modification or education, welfare and rehabilitation. But I don't think it would make much difference to complaints received.

MR CORNWELL: What sorts of complaints?

Ms Haase: We've received only one in the time I've been there, which is the last 12 months. That was about visitation and the rules around contact—when parents can or cannot go to see young kids.

MR CORNWELL: What about Belconnen? Is it overcrowding? Is it food?

Ms Haase: As we said in our annual report, the complaints in the last half of last year were very much about overcrowding and the use of the police cells, but they have been cut down.

MR CORNWELL: I'm just trying to get an idea of the scope.

Ms Haase: They diminished in the second half of the last financial year.

MS DUNDAS: Did the complaints to you about Quamby come from the young people in Quamby or from others?

Ms Haase: It usually comes from the parents or other relatives, or it can come from agencies such as the Community Advocate's Office.

MS DUNDAS: So the Office of the Community Advocate would make a complaint to you?

Ms Haase: They can, and they have done so in the past, yes. They can act on behalf of a young person who has had treatment they don't agree with, saying that we should investigate it. As I said, we'll probably visit the Quamby centre again in the next couple of months.

The third investigation that I'd like to talk to you about was an investigation into some of the incidents that happened on a school excursion outside Australia. A young person became very ill during the excursion. This led to a number of issues being raised in relation to policies and procedures in planning excursions and policies in relation to emergency plans and making sure that you can contact a hospital. We presented a report to the department of education and training on that matter and made a number of recommendations. All were accepted and have been implemented.

MR CORNWELL: Why did the department of education become involved in a school excursion overseas, which you presume would have been operated by a school with the active participation of parents?

Ms Haase: But by a public school falling under the department of education.

THE CHAIR: Is it just the protocol of going through the department instead of going to the school?

Ms Haase: Yes.

THE CHAIR: If there is a systemic breakdown, the department puts the policy together to make sure the rest of the schools do not fall in the same hole.

Ms Haase: We made recommendations on revisions to policies and procedures for planning school excursions, particularly overseas excursions. Generally, policies for all government schools come from the department. The department head signs them off. So

we had to go through the department head to ensure that the recommendations were listened to.

We talked about making sure that emergency plans were in place and making sure that there was adequate counselling and critical incident debriefing in place afterwards if such an incident occurred. We also recommended that the department look at the development and implementation of policies and procedures for the administration of prescription drugs to students on excursion so that when you are away from home you make sure that children get their medication.

MS DUNDAS: Was there a broader discussion about teachers being able to give consent on behalf of the young people, as with guardianship? I assume the students were all under 18.

Ms Haase: That's right.

MS DUNDAS: A teacher would had to have signed for admission to hospital and those kind of things.

Ms Haase: Parents have to give permission for children to go on excursions and for the teachers to make those decisions if the parents are not there. That is part of it already, but we had to make sure that these procedures were well and truly in place, particularly for when you go overseas and perhaps can't come home very quickly. This excursion went to some fairly remote areas. It's imperative that teachers be able to do certain things when they have children in their care and issues and incidents arise. The department was happy with our recommendations and has put them in place.

We've received well over 100 complaints from, or on behalf of, young people in the past three years. Young people tend to complain about actions of police when they are in trouble with the law. Parents complain on their behalf about institutions like Quamby and about child protection issues such as actions taken by Family Services. Those complaints can concern the absence of, or lack of action on, case plans in relation to children, contact issues, change of caseworkers, or Family Services acting or not acting on abuse notifications. There can be a wide variety of complaints.

MS DUNDAS: Out of the 100 or so in the last three years, how many came from young people themselves as opposed to somebody acting on their behalf?

Ms Haase: I don't have the exact figures, but the majority would have come from adults—parents, friends, relatives or other concerned adults—talking on behalf of children and young people.

THE CHAIR: Would the majority of young people aged between 12 and 20 have heard of the Ombudsman?

Ms Haase: Yes. That leads me to the concluding remarks I wanted to make. In our experience, children and young people are keenly interested in their rights, but they have little knowledge on how to exercise them and how to seek resolution of some of the issues they face.

We're trying to assist young people where we can through resolving complaints and through our own motion investigations. However, given the range of agencies that are available, including us, we believe it's probably desirable to make a greater effort in publicising what is available to young people and making sure that children and young people are aware of where they can go and which agencies they can approach.

THE CHAIR: I take up the valid point you make. If I want to complain about care and protection, I can complain to the department, the Ombudsman, the Community Advocate or the Public Service Commissioner, or I can complain to all of the above, which I suspect some people do.

Ms Haase: Yes, that's true.

THE CHAIR: If we create a commissioner for children and young people, will we be adding to the list of forum shopping, or will such a specialised position stop forum shopping?

Ms Haase: We are well aware of the huge variety of agencies in the ACT that children but also other people can go to. We need to be careful that we do not duplicate effort or make the choice more confusing than perhaps it already is. Whilst we would not want to make a recommendation as to whether or not we should add another agency, I think we need to be aware that there are a number of agencies. We would need to clearly define the roles of each of those agencies to make sure we were not duplicating effort.

MS DUNDAS: Do we need to clearly define the role of those agencies, regardless of whether or not we create another agency?

Ms Haase: I think so. They need to be clearly defined, yes. We from the Ombudsman's office see ourselves as the agency of last resort. When people ring us up, we ask them whether they have gone back to the agency. We believe that if you have a complaint about someone you go to the agency first and try to sort it out with them. If that's not possible, and you have tried and exhausted all complaint mechanisms, then by all means we're more than happy to look at the complaint. But we would not want to be seen as investigating an issue when the agency is not even aware that there is an issue, so we ask people to go back and talk to the agency heads.

MRS CROSS: Assuming that the complainants have exhausted the agency conciliatory mechanism, when do you reach a stage when you can't help? Does the legislation, for example, cover you in offering help in every situation, or are there situations where you're hamstrung and you say, "Sorry, but this is not covered"?

Ms Haase: No, our legislation is fairly broad, so we can look at a variety of issues. We are constrained in investigating some areas. For example, we are not allowed to look into issues in relation to employment within the ACT public service. We are not allowed to look into the actions of the judiciary or government ministers, or people acting in the role of government ministers. But other than that we have a fairly wide choice of what we can look at.

MRS CROSS: If you're not allowed to look into those three issues, who then handles those three issues? Where do people go?

Ms Haase: For employment issues, it would be the Merit Protection Commission. I believe ministers are responsible to the public through other processes.

THE CHAIR: I spent nearly 30 years in the public service, but I did not realise that part of the responsibility of the Ombudsman was systemic audit. I always thought of the Ombudsman being the wisest and most powerful complaints commissioner we ever had and that was it. I was interested to hear you say, “We might go and visit Quamby.” Do I take it that you have a self-referral power?

Ms Haase: Yes, we have powers to do an investigation on our own motion. We might feel a complaint needs to be followed up because it is about a significant issue, or we might follow up some of our earlier reports and check again.

THE CHAIR: In your document you talk about some of the things you’d like to see the AFP change. Some they have changed, but in some areas change is a bit slower than in others. You seem to have a role in monitoring the implementation of your recommendations, given that the AFP said, “Yes, that’s wonderful stuff. We’re going to do it.”

One of the things we’ve been struggling with in coming to a conclusion on whether there should be a commissioner is the need for a strong definition that makes it clear whether the commissioner has a complaints handling role or a systemic audit role with respect to services for young kids.

Then there is the process by which the kids can make an input. You said most of the complaints to you are on behalf of kids. You said we should be publicising the role of the Ombudsman. How are we going to do that? Are we going to stand on a street corner with cow bells or something? Do you have any ideas on how we can do that?

Ms Haase: There are various ways, I guess. We have leaflets available on what we provide. Because we’re not an agency set up to do it, it is difficult for us to access some of the organisations that are more in touch with young people. That might be clubs, community centres or other places where leaflets or information brochures could be distributed to make sure information is available. There is the possibility of making leaflets the size of plastic cards and handing them out in schools. They could be on how to go about complaining about something or on any other topic that might be relevant.

THE CHAIR: For example, the benevolent government of the day, bless their little cotton socks, might give you lots of money if you decide to set up a travelling road show and go to all the schools and say “We’re going to teach you what your rights are. If you have a systemic issue, this is the one of the avenues by which you can express your views.” Would you then be encouraging some of the little horrors of the world to make life difficult for other people? Would it increase vexatious complaints, or do you think that would be a positive approach?

Ms Haase: I don’t know that it would increase vexatious complaints. I believe that it’s always important for people—and that includes young people—to be informed of what is available to them and where they go if they have a grievance or an issue. An occasional person who might take advantage of that, but if we feel that it is a vexatious complaint

we can exercise discretion and not do anything further on the complaint and not to waste time.

MR CORNWELL: Including not taking any action?

Ms Haase: And clearly not taking any action.

MR CORNWELL: Including not taking any action against a vexatious complainant?

Ms Haase: We don't have any powers to take action against people that complain in whichever way, shape or form.

MS DUNDAS: Do you think that providing the information is enough, or do we need to look at how young people relate to ACT government systems and ACT government bureaucracies? Is it a two-way thing?

Ms Haase: It probably is a two-way thing. The provision of information is one step, but it's probably a good idea to listen to what young people have to say about what they would like. I wouldn't want to speak on behalf of young people as to what they feel is the best way of making information available to them.

MS DUNDAS: It's not necessarily a theory that I subscribe to, but we were told somewhere in our travels that young people know about their rights only when they need them. Does there need to be systemic change through ACT government agencies so that young people don't need to make complaints? What can we do to make agencies more aware and youth friendly?

Ms Haase: An issue that we want to look at—it's not so much to do with young people—is agencies being aware of feedback about their services from their customers, their clients, be they young people or adults, so that people don't need to go to another agency. The agency that provides the service—for example, a service to young people—would have a feedback mechanism, and if complaints were made they could fix the problem. By listening to the complaints, they could ask themselves, "Do we need to change some of our procedures? Do we need to make our service more user friendly?"

Given time and given resources, we would like to look at general complaint handling procedures within ACT government agencies. What is available and what isn't available? How well does it work? Are people aware that they can approach their supervisor or CEO through a complaints line such as in some of the big Commonwealth departments to make a complaint? I think we need to look at those mechanisms within agencies and make sure that agencies are responsive to feedback from their consumers.

MRS CROSS: You have had over 100 complaints in the last year?

Ms Haase: Three years.

MRS CROSS: You would probably have a feeling for where there is a gap or an area that needs to be addressed. What area have you found the most common complaint relates to?

Ms Haase: The most common complaint by sheer numbers would probably be about the interaction of young people with the police force. It's an ongoing issue in the sense that young people will come to us, or adults will come on behalf of young people, and say that this may have happened or that may have happened. As I said, most of the time the complaint is based on a misunderstanding of procedures.

MS DUNDAS: Your report of 1997 lists a number of areas where police weren't following the law in relation to young people. Is that problem now being addressed? You said that there have been cultural and educational changes throughout the police force, but are they now following their own laws, or are you still getting complaints?

MRS CROSS: You said earlier that you had made recommendations but they had not been implemented fully yet.

Ms Haase: It's continuing, but the number of complaints has fallen, so for us this is an indication that something is working. I don't think you will ever completely eliminate all complaints about that. We're talking about a small number of issues. I don't know that we will be able to get that number down to zero.

MS DUNDAS: You said that most complaints arise from a misunderstanding of processes. Is that a misunderstanding of the application of the law in relation to young people and the police, or is it more minor than, say, not having adults present when young people are being interviewed?

Ms Haase: That's right. It's often more minor than that. Someone might say, "Why did the police officer talk to me in the first place? I was standing on the corner at the bus interchange and they told me that I had to leave." Other people might not have been so happy with what you were doing. They might have been shouting at older people, so the police officer said, "Please stop it and move on." It's that sort of misunderstanding. The person says, "Why does he pick on me?" Police officers are correct in their procedures, but perhaps young people see it from a different perspective, so they come to us and complain about it. Just because we get a complaint it does not mean that it's substantiated or that the police did something wrong.

MRS CROSS: But at least they've got somewhere to go.

Ms Haase: That's right. As we said, most of these complaints are unsubstantiated or they are so minor that they are conciliated and everybody is happy afterwards. They are not big problems, but people have somewhere they can go and say, "This is what happened to me. I don't think that was right. Can you please look into that?" That's the sort of service we can provide.

If you can go back to the person and say, "We can understand that you may have seen it this way, but this, that and the other happened and that's okay," then it's a bit of an education tool as well as making sure that everything was above board and okay.

THE CHAIR: Thank you very much, Chris, for your time. We appreciate you getting out of your sick bed to speak to us.

Ms Haase: Thank you for giving me the opportunity.

THE CHAIR: It's wonderful of you. We have had a quick scan of the document you kindly gave us. We appreciate your time. Thank you very much.

(Evidence was then taken in camera.)