CHILD ABUSE AND THE LAW

THE AUSTRALIAN REFORM COMMISSION'S APPROACH

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The Report

The Australian Law Reform Commission's report, *Child Welfare*, was tabled in the Commonwealth Parliament in November 1981. Although the report deals with child welfare in the A.C.T., many of the issues which are addressed are the same as those being considered in other parts of Australia. The report covers a wide range of matters, including:

- young offenders and methods of dealing with them;
- children in need of care;
- abused children;
- the licensing of child care services;
- children in employment; and
- welfare services for children and families.

This article will focus on the Commission's recommendations on the reform of the law relating to abused children and other children in need of care.

Children in Need of Care

A child who has suffered physical or sexual abuse is an extreme example of a child in need of care. In order to understand the Commission's recommendations on the law relating to abuse it is, therefore, necessary to examine the report's approach to the broader problem of the child whose situation requires legal intervention. Existing A.C.T. procedures for dealing with these children are outmoded. Neglected and abused children and children otherwise at risk must be 'charged' with being 'neglected' or 'uncontrollable' if it is felt that protective intervention is required. Further, the various definitions of 'neglected child' such as are contained in s.5 of the Child Welfare Ordinance 1957 (A.C.T.) have rightly been described as 'archaic or Victorian'. Very early during its inquiries the Commission formed the view that there is a need for a completely new procedure for dealing with children in need of care in the A.C.T.

Two principles should be reflected in the design of this new procedure. These are:

- court action in respect of children in need of care should be avoided wherever possible; and
- when it is necessary to take a matter to court the procedure employed should be quite different from that used in respect of young offenders.

Each of these principles must be examined in turn.

There are several reasons for seeking to avoid resort to court proceedings when a child is found to be abused, neglected, abandoned or otherwise in a harmful situation. These are:

- the adversarial procedures of our court system are ill-suited to the resolution of the personal and social problems raised by these cases;
- by its nature a court order cannot offer a complete and continuing solution to a family's problems, which may be better met by the provision of immediate welfare assistance;
- court proceedings, whatever modifications are introduced, and whatever the motivation of participants, inevitably tend to be stigmatizing and disturbing to those involved; and
- resort to court proceedings can sometimes reduce parents' willingness to accept personal responsibility for their children and damage the relationship between parent and child.

The adoption of the principle that court action should be avoided where possible should not be taken as indicating a lack of concern for children in trouble. Like the United States Juvenile Justice Standards Project, the Commission's recommendation that the scope of coercive intervention be restricted reflects doubts about the effectiveness and appropriateness of coercive action, not about the need for services. (Juvenile Justice Standards Project, 1977, 6). Every effort should be made to provide informal services on a genuinely voluntary basis. Legislation to protect children in need of care should provide a framework which limits resort to court action to those cases where it is essential or may be useful, and which facilitates the exploration of informal solutions. Court proceedings should, as a general rule, be a last resort. A court is usually an unsatisfactory forum in which to pursue benevolent policies. Coercion and benevolence rarely make a good combination. If the aim is to help, this is much more likely to be achieved by avoiding resort to court proceedings and by offering assistance on an informal basis. Compulsion often generates resistance. (Andrews and Cohn, 1977, 88). The role which a court can play is very limited. It is not an all-purpose welfare agency. When dealing with the child in need of care, its primary purposes are to rule on disputed questions of fact and to sanction coercive intervention.

With regard to the sanctioning of state intervention in families' lives it is, as the N.S.W. Green Paper points out, imperative that there be no interruption of parental rights contrary to the wishes of parents without parents and child having an opportunity to be heard in

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court. (Green Paper, 1978, 32). The emphasis on the avoidance of court proceedings should not be allowed to obscure the importance of the positive role which a court can play. Courts are concerned with the protection of rights and it must not be overlooked that there will be occasions when the child or his parent denies the allegations on which care proceedings are based. A desire to restrict the role of the court in these proceedings should not be permitted to lead to the creation of a system in which this basic consideration is ignored.

Mention must also be made of a principle closely related to that of court avoidance. A commitment to restricting coercive intervention can be taken as implying a commitment to the preservation of parental autonomy. The Juvenile Justice Standards Project, for example, advocated a deference to parental autonomy as being fundamental to its proposed reforms. In the opinion of those associated with the project, the nature of a democratic society requires that diverse views and lifestyles should be accommodated and that child-rearing should normally therefore be left to the parents. (Juvenile Justice Standards Project, 1977, 37). Although these arguments are valid, and it is most important that parental autonomy be preserved wherever possible, respect for parental autonomy should not be elevated into the sole principle on which the system for dealing with children in need of care is built. The relationship between a parent and child is a special one, and a child welfare system should attempt to balance the rights and interests of both children and parents.

The second principle which the Commission adopted is that when it is necessary to bring children in need of care before a court, the procedure employed should be quite different from that used when young offenders are taken to court. What is recommended is a new form of procedure by which a child in a harmful or undesirable situation can be brought before a court by way of an application for a declaration that he is in need of care. This is intended to be a civil procedure. It is also intended to permit the replacement of proceedings which concentrate on the proof of a specific incident or situation with proceedings which allow an examination of a pattern of events indicating a child's need for care. In short, the aim has been to design a new procedure specially adapted to the purposes pursued. Under the present A.C.T. law reliance must be placed on a clumsily adapted form of criminal procedure.

The Problem of Definition

Having formulated certain basic principles, the Commission then faced the task of defining the grounds for coercive intervention in the lives of children in need of care. This task raises difficult questions about the types of situation in which society is justified in intervening in the lives of children and their families. The problem which must be faced is whether the legislative definitions of the ground for intervention should be expressed in broad or narrow terms. On the one hand is the view that the situations requiring protective intervention by society are so diverse that a restrictive approach is undesirable. It can be argued that the legislation should provide a net within which can be brought a wide variety of circumstances and that lack of precision is a virtue. On the other hand is the view that, as the role which a court can perform is limited, the aim must be to restrict the grounds for intervention in non-criminal matters. Failure to do so reflects an inability to distinguish between situations in which help is needed and those in which coercive intervention is warranted. Further, broad definitions lend themselves to subjective interpretations and permit findings which are virtually unchallengeable. For example, one of the Child Welfare Ordinance's definitions of a 'neglected child' is one 'who is under incompetent or improper guardianship'. Such a formula is so vague that virtually anything may be accepted as evidence to support an allegation that the child is neglected. Definitions of this kind require that those in the field exercise wide discretionary powers. If the formulas used are broad and vague, it is left to those who administer the law to determine when intervention is desirable. The greater the breadth of the criteria, the more scope there is for differing interpretations based on personal values. Throughout its report the Commission emphasises the need, when dealing with the young, to balance legal considerations against those relevant to children's welfare. Coercive intervention should be permitted only after the careful proof of clearly defined matters. Vague definitions are inimical to such an approach and do not reflect the necessary concern for due process. They do not, for example, permit the court or counsel to focus on specific issues. They make it difficult for the legal representative of the child or the parents to prepare a case, cross-examine, or object to evidence. Another point is that if courts need not justify their decision to intervene on the basis of specific criteria, they are unlikely to make sound decisions about the appropriate disposition even when intervention is justified.

> Such decisions require weighing the harms to be prevented or alleviated against the harms likely to result from a specific intervention program. This cannot be done when the harms to be prevented are ill defined. (Wald, 1976, 251).

Although the Commission believes that the grounds for care proceedings should be precisely and narrowly defined, the solution to the definitional problem is not to be found solely in a stringent legislative prescription of the personal and social circumstances which justify intervention. The definition of these circumstances must be seen as part of a broader strategy to strengthen and develop alternatives to court proceedings. The aim should be the creation of a system which discourages the use of the court as a vehicle for benevolent purposes. Such purposes can best be pursued outside the court. The Commission's proposals regarding care proceedings have been framed with such a strategy in mind. In order to erect a barrier to premature or unnecessary court proceedings it is recommended that, before a court can make a declaration that a child is in need of care, the court must be satisfied that the child falls within one of the definitions of a child in need of care (these definitions are set out below) *and* that the child's situation is such as can be met only by way of a court order. Thus what is proposed is a dual test. Not only must the existence of an undesirable situation ('the primary ground') be established, but also it must be shown that this situation is not susceptible to an informal solution. With regard to the latter ground it should be necessary for the applicant in care proceedings to lead evidence indicating that informal solutions have been tried and failed or that they are manifestly inappropriate.

The definitions of the primary grounds for care proceedings should display clarity and precision. The first step towards the achievement of this goal is to identify the basis for intervention. The Commission is in broad agreement with

the conclusion reached by the Juvenile Justice Standards Project that it is actual or potential harm to the child which should, in general, provide the basis for coercive state intervention. (Juvenile Justice Standards Project, 1977, 38-39). The importance of the adoption of this principle is that it leads to a rejection of definitions concerned with parental conduct or the child's environment, and focuses attention on the impact on the child. Definitions which refer to parental competence or to situations considered to be inherently undesirable should be rejected not only because they are vague, but also because they suggest that society's concern is with the child's situation rather than with the harm which it is doing, or might do, to the child. Recognition that the prevention of specific forms of harm should be the objective of intervention clarifies and simplifies the task of defining the primary grounds for care proceedings.

The Commission's report contains a thorough examination of the various types of harmful situation in which coercive intervention might be thought to be justified. Space does not permit an examination of these situations, or a discussion of the arguments which must be confronted when an attempt is made to define the grounds for care proceedings. After weighing these arguments the Commission recommended that, for the purposes of initiating court proceedings, a child should be regarded as being need of care if:

- the child has been physicall injured (otherwise than by accident) or has been sexually abused, by one of his parents or by a member of the household in which he lives or there is a likelihood that he will so suffer such physical injury or sexual abuse;
- the child has been physically injured (otherwise than by accident) or has been sexually abused, by a person other than a parent or a member of his household, or there is a likelihood that he will so suffer such physical injury or be sexually abused, and his parents are unable or unwilling to protect him from the injury or abuse;
- by reason of the circumstances in which the child is living or in which he is

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found—

the health of the child has been impaired or there is a likelihood that it will be impaired; or

the child has suffered, or is likely to suffer, psychological damage of such a kind that his emotional or intellectual development is or will be endangered;

- the child is engaging in behaviour that is, or is likely to be, harmful to him and his parents or his guardians are unable or unwilling to prevent him from engaging in that behaviour;
- there is no appropriate person to care for the child because—

he has been abandoned by his parents or by his guardian;

his parents or his guardian cannot, after reasonable inquiries have been made, be found; or

his parents are dead and he has no guardian;

- there is incompatibility between the child and one of his parents or between the child and his guardian; or
- the child is required by law to attend school and is persistently failing to do so and the failure is, or is likely to be, harmful to the child.

If a child falls within one of these definitions *and* his situation is such as can be met only by a court order, then the court should be empowered to make a declaration that the child is in need of care.

The Youth Advocate

To complete this outline of the Commission's proposals relating to care proceedings, mention must be made of a new official whose appointment is recommended in the report. This is the Youth Advocate. Among the functions to be peformed by this official would be the initiation of care proceedings. Again, space does not permit a detailed examination of the reasons which led the Commission to the view that a Youth Advocate should be appointed in the A.C.T. In summary, the Commission believes that there is merit in having the decision as to the initiation of care proceedings made by a person independent of the welfare and health services. If those who provide these services are also responsible for the initiation of court proceedings, they are in a position to exercise a substantial amount of power. The creation of an independent official with responsibility for the initiation of care proceedings would be a small but significant step away from a system in which one agency is able to exercise a disproportionate amount of control over the outcome of a case and the provision of services. In addition to the introduction of desirable checks and balances, the appointment of the Youth Advocate would bring to the system an official who would be clearly identified as being responsible for the taking of decisive action to protect children. At present in the A.C.T. it is possible for care cases to remain poised uncertainly between a number of agencies, the concern of all but the responsibility of none. This problem is not confined to the Territory. Both in other parts of Australia and overseas, it is common for difficult care cases to involve a number of government and voluntary agencies and for these agencies to operate in an uncoordinated fashion without reference to each other. The Youth Advocate would provide a focus by serving as an official to whom any person concerned about a case could make a report. He or she would discuss the case with the appropriate agencies and would be responsible for determining whether care proceedings should ensue. Such an official would not only have the responsibility for taking decisive action when this is indicated, but would also be required to ensure than unnecessary proceedings not be initiated. Earlier in this article emphasis has been placed on the need to avoid resort to court action wherever possible. One of the Youth Advocate's functions would be to inquire into the handling of a case to determine whether all informal alternatives had been explored. The Youth Advocate would thus have a part to play in ensuring that care proceedings are initiated only when court action is necessary and appropriate.

Child Abuse

As has been noted, an abused child represents an extreme example of a child in need of care. If coercive intervention is required to protect such a child it will, under the Commission's proposals, be necessary for the Youth Advocate to make an application to the Children's Court for a declaration that the child is in need of care. To succeed in this application, the Youth Advocate will be required to establish that the child has been, or is likely to be, physically or sexually abused and that the situation cannot be resolved informally.

When a case of child abuse requires the initiation of care proceedings it will be dealt with in much the same way as other cases involving children in need of care. There are, however, certain features of child abuse which require special attention by the lawmakers. Three of these will be examined here. They are:

- the reporting of cases of child abuse;
- the need for holding orders; and
- the prosecution of abusing parents.

Compulsory Reporting

One of the most difficult issues which confronted the Commission in the entire child welfare inquiry was whether certain categories of persons should be obliged to report cases of child abuse. The arguments on either side of the fierce debate about compulsory reporting are well known and no more than a summary of the more important points will be attempted here.

The following are the main arguments in favour of the enactment of legislation for complusory reporting of cases of child abuse:

- *Role of the law in protecting the child.* Children need special protection by the law because they have fewer means to help themselves. Moreover, the child's right to preservation of his health and life outweighs the right of a family to freedom from interference. Compulsory reporting, therefore, underlines the law's commitment to the protection of children.
- *Facilitating reports.* After reviewing a number of studies, the Commission concluded that the introduction of complusory reporting legislation is accompanied by an increase in the number of cases coming to notice. This may be because of the sanction attaching to a failure to report, or because of an improved community awareness of the problem due to publicity surrounding enactment of the legislation. Alternatively, the increase might be the result of the establishment of crisis centres or new procedures for access to supporting services, introduced simultaneously with the legislation. Nevertheless, in the Commission's view, there is no reason why the introduction of complusory reporting legislation, together with improved access to supporting services and an increased community awareness of the problem, should not be accompanied by an increase in the number of reported cases of child abuse.
- *Research, statistics and prediction.* There is a need to know the incidence and location of child maltreatment. The indirect benefit of compulsory reporting legislation is the development of

statistics which would assist in the identification of social and geographical areas where child abuse is more prevalent. Once identified, such areas would gain priority in the establishment of crisis centres or nurseries for the care of children for periods of a few hours or days. Further, compulsory reporting makes possible the establishment of a central register of cases. Because children who have been abused may be presented at any of several hospitals, or to different medical practitioners, upon different occasions, a register assists in the detection of child abuse and assessment of the risk of re-occurrence in any particular case.

• *Advantage in loss of choice.* The position of the medical practitioner and other helping professional is made easier in his relationship with parents as he is able to explain that he is compelled by law to notify the appropriate authority. The trust between medical practitioner or other professional and patient is not lost because the former clearly has no choice in the matter.

• *Multi-disciplinary decision.* Some professions display an unwarranted scepticism about involving those in other fields. With compulsory reporting a professional is relieved of sole responsibility for exercising a discretion as to the action to be taken and the benefit of multi-disciplinary training and experience is brought to bear. Child abuse is too complex a problem for any professional to deal with alone.

• *Public commitment.* Legislation represents a public commitment to protecting abused children and enables the community to become involved in achieving that end. It should compel the generation of adequate services.

The following are usually advanced as the arguments against compulsory reporting of suspected cases of child abuse:

• *Discouragement from seeking help.* Parents and caretakers may be discouraged from seeking help, especially medical attention, for children they have injured, in the knowledge that reporting may result. Thus, cases may be forced 'underground'.

• *Breach of confidentiality.* A doctor who discloses to a third party the details of a patient's condition is in breach of his duty of confidentiality to the patient. The requirement of strict confidentiality in the doctor-patient relationship is an element of professional medical ethics which is at least as ancient as the Hippocratic oath.

• *Further violence.* There is no proof that compulsory reporting does not put as many children at risk as those whom it assists. A report may precipitate a further incident of physical abuse or prolonged emotional maltreatment and withdrawal of the family from neighbours and other persons who may otherwise have provided assistance.

• *Unenforceable obligation.* Provisions for compulsory reporting are virtually unenforceable. The community is generally averse to prosecuting medical or other helping professionals who act in good faith. If a charge were laid, it would have to be proved beyond reasonable doubt. The practitioner would in many cases be in a strong position to argue that he did not know the abuse had occurred.

• *No simple solution.* Reporting legislation does not guarantee effective services and there is danger in the adoption of the belief that legislation solves the problem. There is a grave danger that cases may be reported and yet prompt action may not result because of lack of staff in over-extended services. The emphasis should be on making services available and acceptable, rather than on the imposition of legal obligations.

• *Professional discretion.* It is preferable to leave to the medical practitioner or other professional the discretion to decide whether, taking into account any particular or unusual circumstances, a case should be reported. The professional is in the best position to assess the desirability of jeopardising the relationship of trust and also bears the financial and emotional consequences of any breach of professional confidentiality.

• *Problem of definition.* There is great difficulty involved in defining child abuse, not only with regard to the inclusion or otherwise of emotional or sexual abuse, but also with regard to distinguishing such cases from cases of neglect. The area is too vague to allow for legislative definitions of the circumstances in which a duty to report arises. Confusion as to whether a case comes within the definition will probably lead to a failure to report.

After carefully weighing the arguments—which are finely balanced—the Commission decided to recommend the enactment of compulsory reporting legislation in the A.C.T. The following are the reasons for the Commission's conclusion:

• *Accompanying increase in reported cases.* It is doubtful whether it could ever be conclusively proved that compulsory reporting causes more cases of abuse to come to notice. On the other hand, neither has the claim that compulsory reporting legislation deters parents from seeking medical help been statistically proven. Clearly, other factors, such as publicity or the provision of services, may be relevant to any change in the number of cases reported or in the response of parents. The Commission favours the view that the introduction of compulsory reporting is likely, on the evidence, to be accompanied by a significant increase in reported cases of abuse.

• *Basis for commitment.* Legislation is an essential element in establishing a public commitment to the protection of children.

• *Breaking the chain.* Re-occurrence of abuse following a notification need not be the result of a retributive reaction on the part of the parent. It may have been likely to occur in any case in the context of the continuation of pressures which precipitated the first incident. At least if notification has been made there exists a real possibility of prevention through the provision of supporting services. Maltreatment is often a continuing activity and even at the cost of the parents blaming the child the chain should be broken: abuse can result in serious injury to, and sometimes the death of, the child.

• *Reluctance overcome.* At present the reluctance of many professionals to break well-entrenched and long established habits of professional confidence and unwillingness to become involved in legal proceedings, which expose them to professional discipline and criticism by their peers and which take them away from their work, may contribute to a disinclination to report. Legislation would overcome this reluctance to become personally involved and would impose a public duty to do so.

• *Value of sanction.* It is conceded that where compulsory reporting legislation attaches a sanction for breach of the duty to report, prosecutions may rarely be commenced or be successful. Some jurisdictions have in fact opted to attach no criminal sanctions, as is the case, for example, in Ontario. However, the Commission believes that the existence of the sanction is more important than its enforcement: it can purposefully be used to educate, to direct and to

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reinforce good intentions rather than to provide a basis for prosecutions. The occassional prosecution serves the additional purpose of alerting professionals to their legal duties.

• *Paramount consideration.* The need for express child abuse reporting laws is not avoided by arguments which rest upon any general civic and moral duty to disclose knowledge of crime and wrongdoing. The purpose of legislation is to make plain where the duty lies. Furthermore, a compulsory reporting law emphasises that the paramount consideration is the safety of the child.

Having decided in favour of compulsory reporting provisions, the Commission then had to consider two further questions. How should child abuse be defined for the purposes of these provisions, and which categories of persons should be legally obliged to report cases coming to their notice? Each of these questions will be considered in turn.

An abused child may come within any one of three of the definitions of children in need of care which are quoted above. He might have suffered, or be likely to suffer, physical or sexual abuse, or his health or psychological condition might have been impaired or be likely to suffer. The question to be considered is whether compulsory notification requirements should apply to all cases falling withing the three appropriate definitions. The Commission concluded that the situations to which the compulsory reporting provisions should apply should be relatively narrowly defined. In particular, it is the Commission's opinion that the obligation to report should not arise when there is a likelihood of abuse. The application of compulsory notification provisions to cases in which there is a likelihood that abuse will occur in the future could impede preventive work. That preventive work depends upon the availibility of friendly, accessible facilities which a parent may approach in trust, rather than in fear. It might be argued that, if reporting legislation is to be effective, it should be designed to guarantee that notification occurs, and that the provision of support services is thereby ensured in every case *before* the child is abused. On the other hand, the argument that the family may be discouraged from seeking help must be taken into account. The Commission is of the view that notification legislation should, so far as possible, not be allowed to discourage a parent who, fearing he will maltreat his child, voluntarily contacts a health, welfare or child care agency. The provision for compulsory notification should therefore not be extended to cases of potential abuse. Furthermore, the obligation imposed by the reporting provisions should attach to established events, not to speculation about what might or might not occur in the future. Accordingly, the Commission recommended that the new A.C.T. Child Welfare Ordinance should impose on specified categories of persons an obligation to notify the Youth Advocate if, on reasonable grounds, it is suspected that a child has been physically injured (otherwise than by accident) or has been sexually abused. One further comment should be made about this obligation. The obligation to report would not extend to all types of abuse. Ill-treatment which does not cause physical injury, but which results in impairment to the child's health, is not included in the proposed definition. At the present time the subject of compulsory reporting is a controversial one. In the Commission's view, therefore, at this stage it is preferable to err on the side of caution. Once compulsory reporting becomes accepted in the A.C.T., it will always be possible to expand the definition of the situations which must be reported.

On the subject of the categories of persons who should be required to notify cases of child abuse, the Commission recommended that the new legislation should be clear and specific. It is desirable that the duty to notify should be formulated in such a way that the delineation of classes of persons who bear the duty is not blurred and does not require clarification by judicial interpretation, statements of administrative policy or the ethical rulings of professional organisations. It is recommended that the following classes of persons should be under a duty to make a notification if, in the course of practising their profession, or carrying on their calling they suspect, on reasonable grounds, that a child has been abused:

- medical practitioners;
- dentists;
- nurses;
- police officers;
- teachers and persons employed to counsel children in a school;
- persons employed in the Department of the Capital Territory[1] or by the Capital Territory Health Commission whose duties include matters relating to children's welfare; and
- persons for the time being in charge of licensed child-minding centres.

Holding Orders

In emergency situations it is clearly necessary for the law to empower appropriate officials to remove children from their homes and to place them in custody while a decision is made as to the initiation of care proceedings. Such procedures are well established and the Commission recommended that they be retained. Two of the Commission's recommendations regarding the handling of emergency cases are, however, new.

The Commission proposed the introduction of a procedure which would allow action to be taken in an emergency but which would not inevitably lead to the initiation of court proceedings. Such an approach is consistent with pursuit of the aim of avoiding court action wherever possible. In the Commission's view, a decision to take a child into emergency custody should be quite separate from a decision to initiate care proceedings. Placing a child in custody should not inevitably lead to the initiation of care proceedings. The new procedures recommended by the Commission are designed in such a way as to permit the Youth Advocate, notwithstanding the fact that a child is in custody, to explore the possibility of reaching an informal solution. The system should not operate in such a way that the Youth Advocate's hand is forced by a decision to remove a child from home. Hence the Commission has recommended that the Youth Advocate should be empowered to release a child from custody or, alternatively, to approach the Children's Court for a temporary order authorizing the child's detention to continue. While this order remains in force it will be the Youth Advocate's task to consider the case and to decide whether an informal solution can be reached. Only if the Youth Advocate concludes that an informal approach is inappropriate should care proceedings be initiated.

The second noteworthy aspect of the Commission's recommendations on holding orders is that provision is made for authorised hospital personnel to retain injured or abused children in hospital. When a child who has been physically or sexually abused is brought into hospital, it is clearly desirable for the law to make it possible for the hospital to retain the child rather than releasing him or her to a parent who may be guilty of

the abuse. The new legislation proposed by the Commission therefore makes provision for authorised hospital staff to direct that a child who is in hospital should be retained there. When such a decision has been made, the matter must then be referred to the Youth Advocate, who should then decide whether care proceedings should be initiated.

Prosecution of Parents

All who have been associated with cases of child abuse will be aware that the prosecution of the offending parent can have a devastating effect on parents and child and on their relationship. Yet the fact that a criminal offence may have been committed cannot be ignored. In the Commission's view prosecutions in child abuse matters should be initiated only after specially careful deliberation. The report therefore recommends the introduction of administrative procedures which recognise the need for such deliberation. It must be borne in mind that a police decision to prosecute a parent may or may not have to be taken as a matter of urgency. The police may elect to gather the available evidence with a view to initiating proceedings by way of summons, or they may arrest and charge. Whenever the former procedure is employed, the police should consult with health and welfare authorities before the decision to prosecute is taken. Whilst the decision ultimately rests with the police, the police should be encouraged to respect the advice which these authorities offer. There should be a different procedure when the police have already made the initial decision and a charge has been laid. The withdrawal of the prosecution should be considered, when this is desirable. The laying of a charge should not constitute an irrevocable step which cannot be retracted when it emerges that a prosecution will cause disproportionate harm to the child and the relationship between the parties. Hence, the police should consider, even after a charge has been laid and the matter taken to court, the desirability of proceeding with the prosecution. As soon as possible after the laying of the charge the police should consult welfare and health personnel. If this consultation reveals that it is clearly inappropriate to proceed with the prosecution, the police should be encouraged to seek the court's leave to withdraw the prosecution. What the Commission recommends, therefore, are procedures which require consultation *before* proceedings are initiated, and which will facilitate their withdrawal *after* the matter has reached the court.

The foregoing has sought to outline the more important of the Commission's recommendations relating to the handling of child abuse and of care cases generally. Of necessity, much detail has been omitted. The interested reader should consult the report, which not only provides the necessary details, but also contains draft legislation. An examination of this legislation will allow the reader to understand exactly how the Commission's proposals could be implemented.

1 The reference to the Department of the Capital Territory requires explanation. General welfare and social work services in the A.C.T. are provided by the Welfare Branch of the Commonwealth Department of the Capital Territory. The Welfare Branch is not, however, a legal entity, and hence in legislation it is necessary to refer to the Department as a whole.

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