
Who is Looking After Our Children?

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At a recent forum in Western Australia this critical question was raised - Who is looking after our children? The reality being that adequate provision for the care and protection of vulnerable children has not been evident in Western Australia for many years.

A significant review of the agency with statutory authority for child protection has finally made public many of the startling deficiencies that have been obvious to practitioners for a long time, including

- The under-resourcing of care and protection staffing ,
- the inadequacies of complaints mechanisms for those caught up in care and protection proceedings,
- the inability of the system to respond to cases of chronic neglect,
- and, the lack of alternative care options for children needing to be looked after (Ford, 2007)

Following the Review the agency has been divided into two new departments – the Department for Child Protection and the Department for Communities. These new departments came into being on 1 May 2007 and are expected to be fully operational by 1 July 2007.

Hopefully, these changes along with the pending appointment of a new Commissioner for Children and Young People will herald some much needed changes to the processes that children, needing to be looked after, endure. My hope is that finally the children will have the right to be heard.

I believe that child protection in this state could benefit from an examination of other jurisdictions such as the Scottish Kilbrandon System or the Scandinavian approach of the Children's Welfare Boards which have continued to be successfully utilised since the 1970s.

In May 1961 the Kilbrandon Committee was charged

with the task of developing a strategy for dealing with children in trouble. The Committee defined children in trouble as:

- Those with delinquent behaviour.
- Those in need of care and protection.
- Those beyond parental control. And
- Those who persistently truant.

(The Kilbrandon Report, 1995,ix)

The Scottish Kilbrandon Committee delivered a report in the late 60's/early 70's that recommended a number of principles, including; removing children under 16 years of age from criminal sanction (except in the most serious of cases), and the development of the Children's Hearing System which would hear matters relating to children in trouble. The Committee chose not to differentiate between children with welfare needs and children with a history of offending because it had concluded that a child in trouble was a child who's upbringing had failed and who had a history of failure in education and training. Furthermore, the Committee concluded that when a child was in trouble working with the parent(s) was vitally important and that all interventions should be educative and focus of the needs of the child rather than his/her actions/deeds.

The Children's Hearing System was to be a lay staffed, relaxed and informal process for ensuring that children in trouble were assessed for measures of care. Measures of care included protection, control, guidance and treatment along with consideration for the developmental factors of the child relating to his/her understanding of the situation, his/her social awareness and his/her responsibility for actions relating to the situation.

Many of the recommendations of the Kilbrandon Report were enacted in 1971 through the Children's Hearing System, thus, Scotland provides a model for the administration of child welfare and youth justice that has been in continuous operation since 1971,

although the model has undergone mutations and refinements over more than thirty years of operation.

In the current format of the System, participants do not have legal representation as the System is viewed as a social service rather than an extension of the criminal jurisdiction. Moves to formalise the Hearings and to have lawyers involved have been strongly resisted on the basis that this would change the fundamental nature of the Hearings from a problem solving welfare orientation to an adversarial system with a pre-occupation on due process and legal procedures.

Nonetheless, the basic principles underpinning the work of the Children's Hearing System have remained. That is, intervening at the source of the child's trouble – the family. (Bala et al,2002,108) Such interventions involve an emphasis on parental responsibility, the provision of services to the family and strengthening the family. The introduction of the Children Act 1995 sought to shore up the Kilbrandon principles by; enshrining in legislation that the welfare of the child was to be the paramount concern, that no orders were to be made by a Court or Children's Hearing unless such an order was in the best interests of the child and that the child's views were to be taken into account when determining courses of action. (Bala et al,2002,108)

Given recent media comments and difficulties evidenced in practice with respect to care and protection issues in Western Australia there are some valuable lessons to be learnt from Scotland. On a recent study tour I had occasion to enter a discussion comparing Western Australian's child welfare and Scotland's child welfare, one thing was clearly evident, that the lack of external complaints mechanisms within Western Australia is not conducive to a child's rights based approach to welfare nor does it provide the level of transparency that is evident within the Scottish system.

Children's Hearing System (CHS)

Each Local Authority Area in Scotland has a Children's Reporter (CR). The CR is responsible for investigating matters referred from schools, the police, and Local Authority Social Work and for organising the Children's Hearing System with the Local Authority area. Approximately 70% of referrals come from the police, 25% from Social Work or Schools and 5% via the National Health System. (Personal Communication, David Jones, Children's Reporter

South Lanarkshire, September 13, 2006) The CR is either an experienced Social Worker or is legally trained.

The Children's Reporter can, after investigation of a matter, refer the matter to the Sheriff's Court to hear evidence or may refer a matter to the Children's Hearing System. On referring a matter to the Children's Hearing System a panel will be convened and a representative of the Children's Reporter will attend a hearing to ensure that the legalities and processes used in each hearing are correct, however, the CR has no power to influence the outcomes of the hearing.

A panel is comprised of three specially trained lay personnel/community members. One will act as the Chair. I was invited to attend three hearings, all of which had the same panel. This panel comprised of Alison Hall (a School Teacher), John Latta (a retired plumber), and John Pate (a Manager within the manufacturing industry). I had the opportunity to speak with John Latta and John Pate prior to the commencement of the hearings and they responded to my question of what would motivate some-one to be involved in the Children's Hearing System? As follows-

I had recently retired from an active work life where I was self employed and had a number of staff to supervise, I was bored and looking for something to do that would benefit the community and would use my brain. (Personal Communication, John Latta, 13 September 2006)

I had a very difficult childhood but managed to survive and to be successful, I needed to give something back to the organisations that had helped me. (Personal Communication, John Pate, 13 September 2006)

- The Children's Hearing System can hear matters in relation to child abuse, truancy, school exclusion, offending, and care and protection.
- Every decision of the CHS can be appealed to the Sheriff's Court. Family members are encouraged to participate in the hearing and are provided with all the relevant papers as are the panellists.
- Local Authority Social Workers are present and in cases of offending so are the police.
- If there is a history of violence within the family, a police presence is ordered for the hearing, and

indeed this occurred during one of the hearings I attended.

- Any orders made by the CHS are mandatorily reviewed every 12 months.
- When making judgements, each panellist must present his/her decisions to the hearing.
- The Children's Reporter collects all the documentation at the end of the hearing to ensure that confidentiality is maintained.
- Foster carers, extended family members, youth workers, personal support people can all participate in the hearing.
- The CHS has the power to issue warrants compelling attendance at hearings.

My impression of the hearings that I observed was that it was a useful process for ensuring that everyone present has the opportunity to voice their opinions and to be listened to, and more importantly it provides an external accountability for the Local Authority Social Workers (who acts as the statutory authority) by providing an opportunity for their action plans to be examined and scrutinised (this is something that is sadly lacking in Western Australia), and monitored. If there are doubts the CHS can order a case review and if there are matters where evidence should be heard in a court of law (eg. in cases of child abuse) then matters can be referred to the Sheriff's Court.

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Violence Against Children: New NGO Advisory Council for Follow-up to the UN Study

A new NGO council is being formed specifically to support strong and effective follow-up to the UN Secretary-General's Study on Violence against Children. Its primary purpose is to encourage and maintain NGO involvement at national, regional and international levels in follow-up advocacy with governments, UN agencies and others for full implementation of the Study's recommendations. The new NGO Advisory Council will have 18 members: 9 representatives from international NGOs, and 9 representatives selected at regional level from national and regional NGOs.

The nine international representatives have already been selected based on nominations invited from INGOs around the world. Each representative was selected based on the representative's/organization's commitment to the study, expertise on violence against children, ability to relate to broader networks during the follow-up, past history of participation in the study process, and potential contribution to the follow-up process. Paulo Pinheiro and Jaap Doek were each consulted for the final selection process.

The selected organisations and their representatives are: CRIN (Veronica Yates), Defense for Children International (Virginia Murillo), ECPAT (Theo Noten), Global Initiative to End All Corporal Punishment of Children (Peter Newell), Human Rights Watch (Jo Becker), OMCT/World Organization Against Torture (Cecile Trochu Grasso), Plan International (Ann-Kristin Vervik), Save the Children Alliance (Roberta Cecchetti) and World Vision (Sara Austin). Brief bios of each of the members appear below.

The process of selecting the 9 regional representatives is still underway, but will be announced shortly.

The mandate of the NGO Advisory Council is:

- To encourage and maintain NGO involvement at national, regional and international levels in follow-up advocacy with governments, UN agencies and others for full implementation of the UNSG's Study recommendations;
- In particular to advocate for a Special Representative to the SG on violence against children and to work with a SR when appointed;
- To work with the Independent Expert and the