

**Care and Protection
is about
adult behaviour**

**The Ministerial Review of the
Department of Child, Youth and Family Services**

Report to the Minister of Social Services and Employment

Hon Steve Maharey

Michael J A Brown

December 2000

“Parenthood remains the greatest
single preserve of the amateur”

(Alvin Toffler)

To the Honourable Steve Maharey, Minister of Social Services and Employment

Foreword

Dear Minister

In accordance with the terms of reference for this review, I met with, spoke to and received written submissions and general information from a wide range of stakeholder groups and other interested parties. These included Maori organisations and individuals, community based professionals, non-government organisations, Police, some health and education services, and I had numerous meetings with executive staff and former staff of the Department of Child, Youth and Family Services itself. A number of academics, former senior civil servants and Treasury officials were extremely generous with their advice.

The Commissioner for Children and his staff have been particularly helpful as has been the legal profession and Family Court Judges.

Perhaps the most impactful meeting was with a group of teenagers who are either currently in care or had recently left care. That group I consider to be truly “stakeholders” in the best sense of that overworked word.

In addition there was a vast reservoir of literature on the topics of this review and I have attempted to traverse as much as possible those which appear relevant including revisiting the Mason Report.

Various meetings were held with Women’s Refuge groups, domestic violence organisations, foster parents and grandparents involved in “Parenting A Second Time Around”.

As I indicate within this report, the area of child and adolescent mental health and our present capacity as a nation to deal with these problems is, I think, a matter of grave concern.

Throughout this exercise I have been conscious of the potential damage to the Department of Child, Youth and Family Services when that organisation is, often unfairly, the target of frustration which may be inevitable in this complex sector. A situation where the Department becomes the butt of ill-will which in turn overshadows commendable achievements and undermines the Department’s public credibility.

For those reasons much of my report has been targeted towards attempting to explain the complexity and competing tensions confronting those engaged in this field.

Finally it should always be remembered that we do not need to accept that neglect and abuse of children is some natural phenomenon. The tragedy and cost of such actions can be averted but not by any government department alone.

Rather it will, in my respectful view, be a test of our character as individual citizens, decent communities and as a Nation to make New Zealand the best country in which to raise children.

Acknowledgements

I would like to publicly express my gratitude to all those who have helped me with this review.

In particular my immediate staff members, namely Ms Marie Wallace who transformed my untidy and barely legible manuscript into orderly typescript. As well, her courtesy and loyalty made her a delightful colleague.

Similarly Ms Deborah Yates whose considerable experience in this field together with her passion for the “cause” of improving the welfare of children and young persons “at risk” proved invaluable both in assistance with research areas and as a constructive critic and sounding board.

In the final phase of preparation we were joined by Ms Paula Bryant whose multiple academic qualifications and profound common sense were greatly appreciated.

Michael J A Brown

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Significant Legal Milestones in Issues Affecting Children in New Zealand

- 1908 Infants Act passed making provision in Part IV for protection of children.

 Coroners Act passed.
- 1910 Destitute Persons Act passed making provision for illegitimate children and deserted wives and children.
- 1925 Child Welfare Act passed making ‘better provision with respect to the maintenance care and control of children who are specially under the protection of the State and to provide generally for the protection and training of indigent neglected or delinquent children’.
- 1938 Social Security Act passed providing *inter alia* ‘for such other benefits as may be necessary to maintain and promote the health and general welfare of the community’.
- 1951 Coroners Act passed.
- 1964 Social Security Act passed.
- 1968 Guardianship Act came into force.
- 1972 Department of Social Welfare formed ...

In A Study of Financial Management Practices in the Children and Young Persons Service in Fiscal 1994 (the Weeks Report) made this comment –

“The modern history of the development of the New Zealand Children and Young Persons Service (as it then was) logically commenced in 1972 when the Department of Social Welfare (DSW) was established through the consolidation of several other Government entities. From its inception very few staff with a Social Work background secured senior management positions, most of which were filled by staff from the Social Security Department.”

“As the 1970’s progressed the work of DSW was increasingly dominated by the Benefits side of the department. In that period incremental operational funding was directed to staffing the growth in the DPB and UB Benefit area and capital funding was channelled into projects to support that expansion.”¹

That committee further reported –

¹ Weeks, Andrew (1994), A Study of Financial Management Practices in the Children and Young Persons Service in Fiscal 1994.

“That the 1980’s were dominated by the relatively new phenomenon of rapidly rising unemployment. As in the present decade, Social Work became a second class citizen as DSW focused resources on the core issues of unemployment and the management of benefits generally.”²

Presciently it was suggested –

“As a direct consequence of these pressures minimal effort and attention was applied to either the development of Social Service practice or to the associated professional training”³.

- 1974 Children and Young Persons Act passed.
- 1979 ACORD and Johnson Report
- 1980 Revised Court structure of Court of Appeal, High Court, District Court with separate Family Court created.
Family Proceedings Act passed.
- 1982 Official Information Act passed (came into force 1983)
- 1982 Domestic Protection Act (came into force 1983)
- 1983 Maatua Whangai begun.
- 1985 Criminal Justice Act passed.
- 1986 Puao-Te-Ata-Tu report filed.
- 1988 Coroners Act passed.
State Sector Act passed.
- 1989 Public Finance Act passed.
- 1989 *“The implementation of the CYP&F Act 1989. Commenced from 1 November 1989. New statutory officials were introduced into the structure and statutory Care and Protection Resource Panels were established with which staff were required to consult. The jurisdictional separation of Care and Protection, and Youth Justice, led to some organisational change in response. New processes were introduced for the approval of, and contracting with, Community Service Providers.”⁴*
- 1990 New Zealand Bill of Rights passed.
UNCROC signed, ratified 1993
- 1990 Child Support Act passed.

² ibid p. 50

³ ibid

⁴ Submission to the Government Reviews of Referrals and Notifications & Placement Services (2000), Department of Child, Youth and Family Services, p.19

- 1991 *“In 1991, as a result of fiscal pressures, the then Department of Social Welfare reviewed its structure across the Benefit and Pensions and Social Work Divisions. Structures were flattened, student units were closed, and much experience and expertise was lost. The biggest loss to social work support at this time were positions known as Executive Senior Social Workers, who led the Social Work Supervisor group on site and were responsible for the maintenance of professional standards.”*⁵
- 1992 *“In 1992, the ‘Kirkland review’ saw the Department of Social Welfare separate into focussed “business” groups, including the New Zealand Children and Young Persons Service and the New Zealand Community Funding Agency. This period was characterised by the pulling apart of Benefits and Pensions, social work, and community services at the local level and the break up of an administration services network which had serviced these service streams.”*⁶
- 1992 Mason Report.
- 1993 Privacy Act passed.
- “NZCYPS failed to meet its budget requirement (by about \$1.2 million) at 30 June 1993. The Director General of Social Welfare established an external review team led by Mr Andrew Weeks. The recommendations of the “Weeks Report” were accepted by the Director General, at the end of 1993.”*⁷
- 1994 Health Information Privacy Code came into force.
Weeks Report.
- “The first 6 months of 1994 was a period of feverish activity as the service was totally reorganised:*
- *4 regions and 36 branches were disestablished*
 - *14 Area Offices were created each with a number of sites reporting*
 - *A completely new Purchase Agreement was constructed and implemented. KPIs were born*
 - *The CYPFS computerised social work information system was redesigned as SWis*
 - *New HR procedures were introduced across the country, including revised job descriptions and desk files for every position, new time recording and leave management processes*
 - *Pay and accounts work was decentralised to Area Offices, from a central processing centre*
 - *An entirely new National Office structure was introduced with executive responsibilities aligned to output classes.*⁸

⁵ ibid

⁶ ibid

⁷ ibid

⁸ ibid,p.20

- 1994 Amendments to the Children Young Persons and their Families Act 1989 passed (came into force 1995).
Domestic Violence Act.
- 1995 *“In 1995, the NZ Children and Young Persons Service was renamed Children, Young Persons and their Families Service (CYPFS). While not a structural change, the brand change did cause some negative public comment (which was only exacerbated by further name changes in 1999).⁹”*
- 1998 The Director General of Social Welfare announced intention to amalgamate CYPFS and CFA into the Children, Young Persons and Their Families Agency (CYPFA).
- 1998 *“In 1998 the Community Funding Agency (CFA) embarked on significant re-engineering of approvals, contracting and funding processes, which was the precursor to significant organisational change. Simultaneously CYPFS was investigating ways of improving its operations, including:*
- ◆ *The re-centralisation of payroll, some HR and accounting activities*
 - ◆ *An Area network proposal aimed at separating the functions of business and practice management and providing better support to Supervisors and thus Service Delivery teams through the introduction into local operations of the position of Practice Manager – a somewhat “improved” version of the Executive Senior Social Worker position removed some eight years earlier*
 - ◆ *Development of FGC co-ordination services as a separate stream managed nationally*
 - ◆ *Expansion of the Auckland Call Centre to provide nationwide coverage for intake.*
- In September 1998, the Director General of Social Welfare announced her intention to amalgamate CYPFS and CFA into a new entity, to be known as the Children, Young Persons and their Families Agency (CYPFA). This is acknowledged to be the first step in the process of creating a new Department of State. The amalgamation resulted in an entirely new management structure. While not a direct result of the integration process, change proposals underway in the two former agencies continued with the agreement of the new Executive. These change proposals included:*
- ◆ *Restructuring of the Contracting Group*
 - ◆ *Centralisation of Payroll, some HR and Accounting functions*
 - ◆ *The amalgamation of Care and Protection and Youth Justice services in Auckland reducing the number of Areas from 3 to 2*
 - ◆ *Development of a National Call Centre to provide a full front of house service for the new Department including social work intake services.*

⁹ *ibid*

A number of other changes proposed in the Integration Blueprint Document did not proceed. This was either because of the scale of change required at a time the Agency was already stretched, or because of funding shortfalls.”¹⁰

1999

“In April 1999, the Government announced its intention to establish the Department of Child, Youth and Family Services. The implications of this change were in the main at National Office, with the appointment of a Chief Executive and establishment of functions for direct reporting and accountability to Government.”¹¹

2000

November - Decision to implement structural changes within the Services Delivery Group. Area Offices will cease to operate. A new Service Delivery Network will be implemented.

¹⁰ *ibid.*p.21

¹¹ *ibid.*p.21

Chapter 1

Opening

Your instructions as to the objectives of these Reviews fell into three broad tasks.

First, to obtain information about current care and protection, referral and notification procedures.

Second, to obtain information about current procedures for placement of children outside their immediate family or caregiving arrangement.

Both of these information-seeking exercises related to procedures administered by the Department of Child, Youth and Family Services (CYF) (hereafter all references to CYF, or 'the Department', should also be taken to mean the variations of names the Department of Social Welfare has adopted since it first separated into business groups in 1992).

Third, I was asked to make recommendations on improvements to those procedures.

As can be seen from the annexed terms of reference, inclusive instructions as to how the review would be carried out were specified.

This whole exercise has taken place during a time when cases involving child protection, abuse and neglect have received unprecedented media prominence and greatly heightened public concerns.

Hopefully, after the initial horror evinced by those revelations those ghastly and squalid examples will enthuse decent members of our community to examine what role they can take to create a society which doesn't tolerate violence and abuse – one where children may, as of right, be loved cherished, supervised, protected and nurtured. A society where the unique talent each child possesses is developed to its full potential.

Initial examination of the Department of CYF suggests that the organisation should enjoy an advantageous position:

- (1) It is after all a Department which, like the Police and Health, should enjoy a large degree of public goodwill and approval. At least from the majority of the population who recognise the importance of its role and harbour the notion of the Public Good.
- (2) The Department currently occupies a monopoly position in the Child Welfare field. Not by divine fiat but rather as an historic consequence developed throughout the 20th Century in this country. Namely an acceptance by the general population of an increasing obligation to attempt to protect its young. The tortuous nature and extent of that

support is, I suggest, an interesting reflection of our society throughout that turbulent century.

Nevertheless, the monopoly has allowed the Government Child Welfare system in its numerous manifestations to be free of the distractions of competition.

- (3) Further, this remains a Department fully funded by the State.

From a theoretical viewpoint assuming a sufficient level of funding the combination of those above three fortuitous factors should create a near ideal environment. Where all constituent members of the organisation can most efficiently focus their efforts towards enhancing the quality and availability of services to identified children and their families which is the *raison d'être* of the entire Department and the only justification for its existence.

Similarly, you as Minister and 'purchaser' of those services could more readily identify, with much more specificity, the quality and value of 'outcomes' as opposed to the current vague and mainly quantitative measures. Such a clarity of focus would enable those matters superfluous to the work of the Department to be redirected or simply rejected.

Unfortunately any examination of this sector reveals a confusing landscape of shadows, mirrors and smoke.

In the course of this review I received submissions from a wide group of stakeholders (27 categories in all). These included current and former social workers, managers of Child, Youth and Family and associated organisations, family members, caregivers, professionals, child advocates, and a group of young people who are currently in care or recently released from care. What was surprising of the various criticisms made, was a remarkable unanimity from this cross-section. Whatever the merits of such grievances their ubiquitousness is discomfiting.

The other matter of concern was the realisation that for every criticism and imperfection that was pointed out these have been previously conveyed to the Department in its various incarnations and in many cases appear to have already been the subject of various reports.

Those shared complaints most commonly concerned:

- A perception of a service seriously under resourced.
- A demoralised workforce.
- With varied skill levels.
- Disproportionately inexperienced.
- Inadequately supervised and supported.
- Serious difficulties with both recruitment and retention of Social Workers.

- Incapable in many regions of handling the workloads in a truly professional manner and resorting to reactive crisis driven social work.
- Confronting significant growth of new notifications or renotifications but of greater concern children and young persons presenting with multiple and complex problems, some intergenerational.
- A diminishing number of placement alternatives, both inter family and so called 'stranger-care' (a curiously inappropriate and value-laden term given that may equally apply to wide family placements, linked only by obscure ties of consanguinity!)
- With a frontline staff which may at times be exposed to the elements of 'professional dangerousness'. The question then arises, given the current perceived staff profile and lack of supervisory support, do those frontline staff have the maturity or worldliness to identify and cope with those elements?
- By the nature of their calling Social Workers are required at all times to exercise sensitivity in its various forms. At times this may appear to be in conflict with the unwavering injunction as to the paramountcy of the child. Over sensitivity can lead to paralysis of decision making. Once again, maturity and supported decision making is essential.
- An issue raised and elaborated upon in the submission received from the Department of Child, Youth and Family was that 'many staff leaving Child, Youth and Family attribute their decision, in part, to the cumulative caustic effects of negative media portrayal and poor public perception.

All the above factors provide a fertile environment for a 'blame' culture and what at times, appears to be a siege mentality. There have been a number of views expressed suggesting (perhaps unkindly) that the whole organisation of Child, Youth and Family is reflecting the dysfunction of its customer base. Those assertions have invariably been accompanied by recitations of institutional neglect and failure, inadequate reasoning, seemingly bizarre management decisions, and most frequently appalling communication.

I remind myself, that in an exercise such as this, one is less likely to receive endorsements where positive outcomes have been achieved, where social workers, foster parents, carers, legal counsel and professionals have performed their duties superbly, and most importantly those instances where the quality of children's lives have been greatly enhanced.

I feel I must point out that even with some of the most trenchant criticism there was always a flavour of 'disillusioned regretful affection' for those working in this sector.

In the Department's own submission to which I have earlier referred they outlined key points on each of the review headings. With regard to this present discussion it may be useful to outline some of those points as far as the role of the Department is concerned:

"We are the state agency with responsibility for statutory social services.

Our work is challenging and stressful:

- *working with the most disadvantaged*
- *exercising coercive powers in a 'helping' relationship*
- *managing complex inter-agency relationships*
- *facing public and media scrutiny*

Together with work volumes and resourcing issues these factors damage staff morale.

*Our changing community will make the work more difficult."*¹²

Each of those points was developed in the body of the submission exemplified by the following –

"Working at the 'hard end'

Statutory social workers deal with the most extreme situations affecting the wellbeing of children, young people and their families. They make judgements that no other agency or professional is called upon to make, within a system that requires them to constantly reassess priorities and risks. They are in the business of predicting human behaviour, when it is beyond the ability of any social work system to accurately and consistently anticipate how people will act.

The issues confronting our staff are among the most difficult that any social workers deal with. The work is complex and there are few absolutes. Staff members deal with ambiguous information, operate in grey areas and find solutions among options that are often less than ideal. The work is high risk. Mistakes are dangerous and costly, in both human and financial terms. Results are difficult to observe; it is difficult to measure the effectiveness of interventions or to link outcomes for clients to the services provided. There are few valid and reliable measures of either the negative impact or the positive outcomes of social work interventions.

*Despite these difficulties, we manage in excess of 26,000 notifications and 20,000 plans orders every year. Collectively, social workers make more than 15,000 placement decisions in any single year."*¹³

All of the matters raised by the Department in those paragraphs are undoubtedly true. Indeed, the Department's submission as a whole has been remarkably frank and helpful. In any balanced review one has to consider the issues in the context of the environment in which they are operating.

This is a Government Department to which has been abdicated to a large extent the ills and casualties of our contemporary society.

¹² Child, Youth and Family submission to the review, p.7

¹³ *ibid.*

Even the most superficial survey of social, moral and demographic terms throughout say, the last four decades of the 20th Century, will reveal the changing nature of our communities. For example, increasing numbers of Maori, Pacific Island and Asian children. In 1996 24% of children were Maori, 10% were Pacific peoples, and 6% Asian. By the year 2016 these proportions are predicted to grow to 28%, 13% and 11% respectively. Again the phenomenon of children in sole parent families; in 1996 24% of children under 17 lived with one parent. 85% of one parent families are headed by a sole mother, of which 43% are Maori and 30% are Pacific Island peoples.

“In 1996 48,500 children were not living with either of their parents. Most of these children lived with other relatives or siblings.”¹⁴

“New born children with no resident father, made up 24% of all births in 1996.”¹⁵

Further issues of children and crowded housing, unemployment, and low incomes were supplied to me by the Department and makes for solemn reading.

Again, the latter part of the 20th Century saw –

“Global trends (that) have led to sweeping changes in the world economic systems...”¹⁶

“...powerful technological revolutions has an historical equivalent in the industrial revolution.”¹⁷

These in turn have profound effects on domestic economy where inevitably by reason of their extreme vulnerability children are invariably the least resistant to these forces.

When evaluating the quality of services provided by Child, Youth & Family Services in areas such as Procedures for Notification, Referral and Placement, I think too that those areas have to be seen against the turbulent background of state sector reforms commencing towards the end of the 1980s and coinciding with the enactment of the CYPF Act 1989, which at the time, was probably the most radical legislation of its type in the western world.

Given the profound effects of those often conflicting social political and fiscal elements coinciding, it may be that the current perceived profile of the Department was inevitable.

Without wishing to belabour the point, in my respectful view it is not possible to conduct a review of this nature without first looking at the political context within which the Department functions. Nor is such an exercise possible without

¹⁴ ibid.

¹⁵ ibid.

¹⁶ Fancourt, Dr Robin (2000), *Brainy Babies*, p.174

¹⁷ ibid.

examining the political environment in which it has operated for the last 16 years at least.

The election of the fourth Labour Government in 1984 –

“... began a rapid process of economic liberalisation, deregulation and privatisation of formerly State-owned businesses ... New Zealand followed the Thatcherist example ... the strong emphasis on free-market systems changed New Zealand from a protected, highly regulated economy to a very open and deregulated one. This resulted in a period of high unemployment as large numbers of jobs became redundant.

In 1990 the centre-right National Party became government. It quickly moved to introduce labour, public-health and welfare policies which have also had profound impacts on New Zealand society. These changes followed a model deregulated, competitive quasi-market system designed to increase ‘efficiency’ and reduce State expenditure ...”¹⁸

The authors describe those ‘reforms’ in the Health Sector as being accompanied by –

“A familiar recipe of separating policy-advice, purchasing and provider organisations.”¹⁹

In that same paper it is argued that tax and benefit cuts reduced the degree of redistribution of wealth in the New Zealand economy whilst the inequality of income distribution rose. This trend is described as –

“... ‘overlaid’ by a racial inequality as Maori and Pacific Islanders are over-represented proportionally in the lowest socio-economic groups ... and more likely to suffer from multi-level disadvantage and social exclusion.”²⁰

Those same authors graphically, if somewhat polemically illustrate the impact of those reforms in this way:

Child Welfare Legislation²¹

“The New Zealand Children, Young Persons, and their Families Act 1989 represents a major shift in child welfare since its inception, it has excited much international interest, and many other western countries have emulated its processes (McFadden and Worrall, 1999). A major report into welfare services in New Zealand (Ministerial Advisory Committed 1988) had identified the depth of institutional racism in the practices of the Department of Social Welfare and in society at large. It had acknowledged the New Zealand government’s special constitutional and moral obligations to the indigenous Maori peoples of New Zealand, and made wide-ranging recommendations for reforms. This report,

¹⁸ Duncan, Grant & Worrall, Jill (2000), The Impact of Neo-liberal Policies on Social Work in New Zealand

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *ibid.*

among others, was a major influence on the development of the Children, Young Persons and Their Families Act.

Both international and New Zealand research undertaken in the mid-seventies showed large deficits in a system designed to provide safety and security for children in need of care and protection (Prasad, 1975; McKay, 1981; Worrall, 1996). A piece of retrospective research on outcomes for children who were New Zealand State wards, undertaken by the DSW in 1981, showed a picture of placement disruption, instability, cultural dissonance and little chance of return to parents (McKay, 1981). The New Zealand Foster Care Federation publicly called for radical changes in policy and practice for children in care.

The general principles of the Children, Young Persons and Their Families Act state that families/whanau should participate in decision-making about the welfare of their own children who are in need of care and protection. Section 13 makes it clear that the primary role in caring for children lies with the whanau/family, hapu/sub-tribe or iwi/tribe who should be given all assistance necessary to do this.

The economic and political climate, as previously described, was most receptive to any cost-cutting measure and there has been a progressive lessening of State responsibility for family and child welfare. The fiscal cost of maintaining children in care was increasingly seen as unaffordable and for several years previous to the passing of the Children, Young Persons and Their Families Act, long-term foster parents had been encouraged to adopt or take legal guardianship of the children in their care, thus assuming financial responsibility.

The Children, Young Persons and Their Families Act and the Public Finance Act were passed into law in 1989, and the structure imposed by the latter has had a profound influence on the operation of the former.

The Mason Report (Mason, Kirby and Wary, 1992) commented on the impact of government fiscal policies on the Children, Young Persons and Their Families Act, and warned against a system that attempted to quantify social response in dollar terms. That the Children, Young Persons and Their Families Act was seen as a cost-saving measure can be ascertained by the fact that, in spite of an increase in annual numbers of abuse notifications, annual budget levels for Child Protection spending decreased. Budgeted expenditure for Care and Protection Services fell from \$140.7 million in 1991 to \$109.4 million in 1993. This has translated into inadequate staffing levels, insufficient money to support families at risk, crisis management, and residual service provision by the State.

The willingness of the State to support extended-family caregivers, in financial and social terms, is variable, but almost without exception, families are penalised by virtue of being related to the children for whom they care. The financial assistance available to extended-family caregivers is less than that given to unrelated foster-carers, if auxiliary

foster-care allowances are taken into account. This is despite the fact that both care for the same category of children – those who are in need of care and protection, and who are often traumatised. Social work support is not provided to carers as of right, on the basis of policies of minimal intervention and family autonomy. Differentiating between ‘deserving’ and ‘undeserving’ populations and developing different policies and programmes for different subgroups in the population, according to particular categories in which they are placed, has been historically the case for most Western nations (Minkler and Roe 1993:192). Extended families, and in particular women, are now carrying financial and emotional burdens that in the past have been community responsibilities. Extended families as caregivers are expected, in effect, to subsidise the care of abused children, a role once more generously supported by the State when foster families were more frequently non-kin. The State, on the other hand using the widest definition of ‘family’, rationalises such inequities by the neo-liberal belief that families ought to take responsibility for their own, regardless of degree of relatedness.

The complementary relationship between the State’s level of economic health and the degree of support it gives to families has drawn comment by social policy analysts and historians. There is evidence that, in periods when governments need to reduce costs, they tend to place responsibility on families. Increasingly, kin are seen as the first line of assistance for most people with the State playing a residual role (Finch and Mason 1993:177). Baldock and Cass (1990:xi) state that ‘such official emphasis on the family as the provider of a private welfare system presumes that all individuals may call upon family support, and that all families have equal financial capacity to provide it’.

Current social-work practice for children in need of care and protection reflects the influence of contemporary neo-liberal ideology in welfare policies. Non-statutory agencies have to tender competitively for services pre-determined by State-driven needs analyses and ‘output classes’. This leads to fragmentation of services as a large number of providers, each of which may be competing for limited funding in the same field, all attempt to address the complex needs of individuals and families who may suffer from multiple forms of disadvantage. The Government’s ‘Strengthening Families’ strategy has attempted to address this fragmentation by introducing mechanisms for multi-agency collaboration, from which one agency can be appointed to ‘lead’ the handling of the individual case. While this has been a positive step towards the co-ordination of efforts, agencies are often reluctant to take on the lead role in a case that is funded by another agency, as the former must accommodate the new case within their existing budget. So, the principles of client self-determination and capped budgets have worked against the creation of an effective and co-operative approach. Furthermore, inconsistencies of practice have emerged. For example, the assessment, training and support of foster-carers is of very variable quality.

Another effect of contracting-out is that there is less funding of preventative services. The 'outputs' created by a preventative approach tend to be harder to define and measure, and their benefits are, of necessity, less visible. Agencies are largely funded for responding to crises, or in families where there are known risks, through programmes that are limited to fulfilling the obligations of State-controlled contracts. Hence, much of the educative or preventative work which social workers had traditionally carried out as a normal part of their professional work, during whatever discretionary time may have been available, has had to be abandoned as managers increasingly monitor their time-use to ensure that resources are being applied only to those activities which are explicitly funded.

Budgets, of course, are tightly capped. The volume of services performed is strictly limited by budgetary determinants, leaving little flexibility to respond to needs as they arise. Unforeseen needs may attract extra funding, if a strong enough argument can be made - but are not likely to be available until the following fiscal year. For example, foster-care services are purchased by the Government on a contracted and capped annual bed-night availability system. If the budget is over-spent, those bed-nights are not taken up, irrespective of the need or the contract.

Lower-cost contracting means the service-provider agencies may lower staff levels, have fewer qualified staff to reduce salary expenditure, use part-time staff (usually women) and rely on voluntary workers to undertake what were once the tasks of paid staff. Social workers, like many other employee groups in New Zealand, as a result of such reforms are increasingly hired on fixed-term or part-time contracts, offering little job security and or professional development. Many agencies have found means of simplifying their front-line tasks, and hence hire workforces with less experience and fewer qualifications – at lower cost. Indeed, two prominent non-governmental social service agencies created new case law under the Employment Contracts Act when they used partial lockouts to deny unilaterally to staff certain acquired rights of employment such as penal rates for overnight stays.

Meanwhile the number of abuse notifications continued to rise over the last decade, and the numbers of children in the care of the State have drastically reduced. The New Zealand Children, Young Persons Service's Annual Report for 1992 indicates that in 1979 there were approximately 7,000 children in foster or institutional care. At the end of the 1993 fiscal year, there were 2,654 placed under 'legal status'. National data on the number of children who have been the subject of a care and protection issue and placed with kin are unavailable. However, a comparison of the numbers of Unsupported Child Allowance and Orphans benefits drawn (5,076 in June 1998) with children under State Guardianship (1,930 for the same period, some of whom may have been with extended family/whanau) reflects a shift away from stranger foster-care to placement with kin.

Child Welfare services are under stress with increasingly difficult children needing care, a shortage of families able to offer care because more women combine work and motherhood, constant prioritisation of cases resulting in some referrals being unallocated to social workers, and a code of conduct that silences Government workers.

One of the most concerning issues is the fact that such innovative legal and practice reform was introduced with no longitudinal research established concurrently to measure outcomes. Although the Children, Young Persons and Their Families Act states that 'research should be implemented on the effects of social policies and social issues on children and their families/whanau' and that the outcomes of 'services delivered by the Department and other organisations, groups and individuals be evaluated', it has taken a decade to begin that process. Additionally, because of public outcry about deaths of children known to the Department of Child, Youth and Family the new Labour-Alliance Government has called for a review of the policies and practices of the Department in regard to the care of children.²²

The Effects of Managerialist Structures

The neo-liberal era in New Zealand has seen considerable changes in the scope and structure of publicly-funded services (Boston et al.1996). This section will consider the consequences for social services of the changes towards performance-based, or output-focused, accountability and the increased reliance on contestable contracting-out of services.

While chief executives of State-sector organisations now enjoy greater managerial autonomy than in earlier years, the annual budgeting process performed by government creates a much stricter link between the funds supplied and the goods and services (or 'outputs') 'purchased'. This is useful from the point of view of Cabinet Ministers and their officials, as they can more easily trace exactly how allocated resources have been used, and whether this expenditure has conformed with performance expectations. Chief executives can thus be held accountable, and they naturally delegate accountability for budgets and for the achievement of specified outputs down through line management. Hence, managerial requirements can be more strictly monitored and enforced, and this is enhanced for social workers through 'performance-related' or 'merit-based' pay increments and bonuses.

Managers themselves are eligible for performance bonuses if they succeed in under-spending their budgets. And, one may read, for example, in the 1999 Annual Report of the Department of Social Welfare that there were net operating surpluses under all of the output classes which represent social work and adoption services for children, young

²² Abbot, (1987), While child welfare policy exemplifies the effect of neo-liberal reform, mental health services have also been highly affected by the Government's implementation of twin policies of deinstitutionalisation and community care (Richards-Ward, 1994). While these policies are in line with international thinking on appropriate care for the mentally ill, when they occur in a cost-cutting managerialist context, community care can become 'community neglect'.

persons and their families, including those contracted out to non-governmental organisations. A total of \$1.35 million was left unspent, despite the overall shortage of resources in the social-work field and the number of cases receiving inadequate assistance, or no assistance at all.

Since many of the new performance expectations are out-of-step with many core values of the social work profession, there are frequent tensions between demands 'from above' and the needs of front-line staff and their clients. Social workers are often confronted with the painful knowledge that they are practically unable to provide the quality of service that their professional judgement would otherwise dictate.

The overriding objectives of the neo-liberal approach to contract restraint and the efficient containment of family crises, rather than a long-term commitment to caring for and empowering society's most needy citizens. Annual estimates and reports provide information on the volumes and costs of each kind of service 'output', including measures which provide some evaluation of quality. There are qualitative performance standards set down in the Annual Estimates, and these are used to evaluate State-funded social services. They frequently impose inappropriate incentives, however, especially when considered in the light of the importance of long-term qualitative outcomes in effective social programmes.

For example, the qualitative performance indicators on which the Department of Child, Youth and Family (the main statutory social-work agency) reports to Parliament create an incentive to avoid costs, long-term interventions with families, and to close cases early ('within three months with no further action required'). Qualitative performance indicators for Family Resolution Services, for example, have been set at: 75 per cent of agreements finalised within 3 months with no further action required; 75 per cent of FGCs (Family Group Conferences) reach agreement; and 60 per cent of FGC plans and court orders are achieved with no further action required (although the latter used to be 75 per cent). It appears that the most important goal is to get a family to agree to a set of objectives which can be achieved within three months. There is no requirement for long-term follow-up and monitoring (although this is not to say that such activities never occur – they just remain 'invisible' to accounting mechanisms if they do occur, and they are not specifically 'purchased' by government).

Moreover, only the second of the above indicators was actually exceeded in the years to 30 June 1995, 1996 and 1997. In the 1996 year, in fact, only 30 per cent of agreements were finalised with no further action required (compared to the official performance standard of 75 per cent), although this had improved to 64 per cent in 1997. Only 54 per cent of FGC plans and Court orders were achieved with no further action required in 1996 (compared to the standard of 60 per cent), and this had deteriorated to 46 per cent in 1997 (Department of Social Welfare, 1996, 1997).

Should this failure to achieve key qualitative performance indicators be taken as a failure of the organisation to perform effectively at all, or as signifying an imposition of unrealistic performance expectations? The answer probably lies in a combination of factors including under-resourcing of the organisation. It is quite reasonable to question, however, just how realistic it is to expect that cases of abusive and violent families, behaviourally disturbed youths, etc. can be dealt with and closed 'with no further action required' within such short time-frames.

Furthermore, if a family 'completes' its agreed objectives within the three months, and then needs further assistance with a child at a later date, the subsequent intervention is treated as a 'new' case. This hides the ineffectiveness of the earlier short-term intervention, and can be counted as another 'output' when accounting for the volume of services.

Similar performance measures are also applied to services which may be contracted out to non-statutory organisations, such as church organisations, iwi agencies, community agencies etc. there are a great variety of these non-departmental outputs, ranging from life skills development to residential care. Typically, the qualitative performance measures tend to focus on two main areas: the percentage of clients actually completing programmes, and the percentage of providers meeting certain approval standards (meaning organisational systems and competencies). These performance standards are not inappropriate or unclear in themselves. But, once again there is no routine reporting of long-term qualitative outcomes which may result in some evaluation of the benefits individuals, families and communities derive from the provision of these services. The system is driven by the dominant objective of reducing fiscal spending and debt. The result is that service quality may be compromised due to under-resourcing, and the professional values of staff neglected in favour of managerial imperatives to cut costs.

If we add to this the fact that public-sector managers in the social services have received performance bonuses for (in part) under-spending their budgets, it is clear that there exist many incentives in the system to perform a service based on the least possible effort.

This is not to say that long-term, quality-of-life goals are never achieved through the intervention of publicly-funded social services. The point is that, partly due to a preference for evaluating short-term qualitative indicators, such as the qualifications of staff or the timeliness of intervention and case-closure, one cannot really determine how well the more substantive outcomes are being achieved. The current specification of qualitative performance criteria may thus create inappropriate incentives on service providers. The concept of 'quality' being applied here is a misconstrued notion derived from management theory (as, for example, in 'Total Quality Management'), rather than one based on professional or humanistic values (Duncan 1997).

Front line social workers and service managers in both the statutory and non-statutory (or 'voluntary') sectors routinely complain about the extra hours of administration required to fulfil the new criteria of 'output-focussed accountability'. Even so, recent allegations of misuse of funds by one major urban Maori service provider have led to suggestions that there is generally insufficient monitoring of the performance and expenditure of contracted agencies in the social and health-care services.

In summary, the move to a quasi-market system of competitive contracting-out in the social services in New Zealand has had both advantages and disadvantages for community agencies and their clients. The overall strategy by government has been one of cost-saving and hence under-resourcing is the norm. Community agencies can 'do the job cheaper' and many of the risks of operating an organisation can be transferred away from the State. Agencies must bid for funding, usually on a year-to-year basis with little certainty of sustained support; the funding rarely covers the full, long-term costs and risks of staying in business, and hence the community must be looked to for support by way of voluntary donations and labour to subsidise the State's deliberate under-funding. In return, the agencies are required to be fully accountable for the delivery of State-determined 'outputs', including the provision of extensive amounts of information to funding bodies. Nevertheless, contracting-out has created opportunities for the more 'entrepreneurial' social-service organisations to expand; and it has created opportunities for the development of a greater diversity of service providers, especially from among the Maori and Pacific-Island communities.

Ironically, neo-liberal rhetoric is superficially anti-State-control and anti-bureaucracy. In practice, though, as the foregoing discussion will have illustrated, neo-liberal managerialist methods rely heavily on bureaucratic financial and performance controls as a means of 'compulsory accountability'. In the name of 'efficiency and effectiveness', managerialist techniques increase rather than decrease bureaucratic controls over workers, while empowering senior managers as the key decision-makers. While tightening performance controls, managerialism also advocates 'the de-bureaucratisation of employment relations (Pollitt 1993:16) by removing job security and allowing managerial flexibility in determining salary levels as an 'incentive' to enhance conformity and obedience to standardised work-patterns. Social workers thus lose a degree of both their professional autonomy and their security of employment (Duncan 1995)."

Recommendations

- 1.1 That the Department of Child, Youth and Family Services acknowledge that it is under extreme pressure in many areas and that change is needed as a matter of urgency.**

1.2 That the operationalisation of the Children, Young Persons and their Families Act 1989 be reviewed.

Chapter 2:

Management, Accountability and Outcomes

In the foregoing chapter I had endeavoured to place the Department in a contextual frame and indicate those factors which might be seen as having been an influence on the Department's development to its present form.

Those factors are most evident in the areas of Management, accountability and outcomes.

Throughout this enquiry I have been assailed by epithets such as 'siege mentality', 'dysfunctional', 'over managed' and 'under-led', 'strategic dysfunction', 'culturally insensitive', 'a demoralised workforce', 'under-resourced', 'inadequately supervised', 'silo mentality', 'corporatist values', 'demand driven service and capped funding', 'Institutional neglect and abuse', 'recruitment/retention problems', 'statutory conflicts', 'negative public perceptions', 'negative media portrayal', 'restructuring fatigue' and many others of a similarly unflattering ilk.

In my respectful opinion there is an abundance of evidence to support the occurrence or incidence of most, if not all, of those cryptic complaints which would be available in a study of the Department in its various incarnations at different site offices over the last two decades in particular.

Further verification could be found in interviews with former staff who have 'voted with their feet'. Another source would be to speak with those senior staff (by years in the service not necessarily on the promotional level!) who still have vestiges of the 'corporate memory'. Again the annexed summaries of stakeholders submissions might be seen as lending some weight to those perceptions.

Notwithstanding the dramatic severity of those reported remarks it cannot be overlooked that at the same time the role and demands on the Department have been extensive and in some ways overwhelming. As well, a number of excellent strategies and initiatives have been introduced or are currently being implemented. In recent years there has been increased investment in infrastructure, particularly the investment in Information Technology and building residential service capacity. All of these have required significant Government investment and have also been a –

“significant draw on Departmental resources, including frontline staff involvement in project and systems design and testing.”²³

23 Child Youth and Family Services, submission to the Review, p.17

In what is seen by the Department as key points in this general area they recite the following:

- KEY POINTS:
- There is a significant gap between community expectations of Child, Youth and Family and our accountabilities under our Purchase Agreement
 - There is a gap between what is actually purchased from us and what can be measured as being achieved
 - Funding increases for CYF have not been related to increases in demand-driven services
 - 84% of special-costs funding is spent on care services
 - there is a conflict between the Chief Executive's responsibilities under the CYP&F Act 1989 and the Public Finance Act
 - Recent increased investment in Child, Youth and Family has focused heavily on infrastructure requirements
- We need to set in place a more functional set of objectives

In an expansion of those matters the Department says this:

“Unlike Legislation that drives the Health and Education sectors, under the CYP&F Act our Chief Executive Officer is responsible for the provision of services to children, young people and their families - without regard to the limits of available funding. The Act also requires the Chief Executive Officer to ensure services are established in the Community. Provisions of the Act also allow Courts to direct the Chief Executive Officer to provide services and assistance in relation to a child or young person, unless such an order is clearly impracticable.”

The CYP&F Act ensures Child, Youth and Family is a default provider for clients in other sectors. For example the lack of Mental Health services for children and young people can create a care and protection concern that requires care. Once in care, the service costs fall on Child, Youth and Family Services. Under the Act Courts can also make service and support orders against the Department regardless of whether the child or young person is in care.”²⁴

To comprehend the enormity of the role of the Chief Executive it is essential that it also be recognised that she has the almost contradictory obligation of ensuring

24 *ibid*, p.16

that Departmental expenditure is managed in accordance with the financial regime created by the Public Finance Act.

Elsewhere in this review I have set out a timeline of significant changes both structural and legislative which have affected the Child, Youth and Family sector of work. Coupled with that has been the turbulence of numerous restructurings within the last two decades. Whilst the logic of such changes may have been apparent at the time, the frequency of such changes has undoubtedly had a detrimental effect on the stability and confidence of the workforce and possibly shaken public confidence in the organisation.

Viewing that tapestry of change perhaps the most significant single influence has been the watershed provided by the State Sector and Public Finance Acts of the late 1980's.

A most helpful summation of the effects of that legislation was noted in the National Business Review –

“The purpose behind the reforms of the late 1980s was to enforce accountability for the spending of taxpayer’s money and to seek efficiencies in a wasteful and overly centralised bureaucracy. This was achieved by devolving operational authority to the chief executives of state organisations, who were held accountable on a contractual basis for the efficient delivery of specified outputs. And to reinforce this drive for accountability and efficiency, much of the state sector was broken down into a myriad of ‘one purpose – one organisation’ entities.”

“But efficiency gains have been at the cost of effectiveness. This concern was underlined by the State Services Commission (SSC) when it said ‘there is a risk that the activities of the state sector organisations are poorly directed and ineffective’.

The vertical and linear nature of the all-important purchase agreements may have sharpened accountabilities and produced efficiencies. But this narrow focus on outputs has been at the heart of many of the problems of the sector – the lesser attention on outcomes and results, the lack of coherent cross-sectoral approach for tackling wider issues, the cost-cutting approach and the subsequent running down of the sector’s longer-term and strategic capabilities.”²⁵

In support of that proposition he states –

“...a large part of the top management and much of the middle level of the then public service was seen as inimical to the new spirit of efficiency and accountability and were laid off. But they took with them much institutional knowledge as well as the spirit of service of the old public service. The new wave of managers brought with them new skills, but their corporatist values and often their inexperience and inability to define clear roles for their organisations have caused many problems.”²⁶

25 Gamlin, Jeff, ‘Politics’, National Business Review, 14 July 2000

26 *ibid.*

In many ways those views synthesise the wide range of submissions that have been received, for example the “*one purpose – one organisation*” entity seems to reflect the silo mentality which has received much adverse comment and is blamed for the “*lack of coherent cross-sectoral approach for tackling wider issues*”. This is exemplified in the reference made above to the difficulties with children presenting with mental health problems who appear to have been dumped upon Child, Youth and Family. Invariably the cost-cutting approach has been most unfavourably identified.

“The Department did not agree to the introduction of mandatory reporting, noting that further consultation on the subject was required. Financial considerations, which had not been the main factor in the decision to drop proposals for mandatory reporting in 1988, now loomed larger in view of the new funding systems and tight budgetary constraints under which the Department worked. Its attitude towards mandatory reporting left the review team with the ‘impression’ that policy-makers were more concerned about ‘scarce resources’ and workloads than about investigating cases.

Treasury-driven budgetary constraints certainly played their part, as the Department had to adhere to the Public Finance Act 1989 as well as working to maintain children’s welfare. ‘Funding is so tied to the Act,’ stated Robin Wilson, the first General Manager of the Children and Young Persons Service. ‘I’ll say this, and I don’t know that anyone will actually believe it, but I swear to you it’s true: that the Treasury actually suggested to us, because we couldn’t manage with our budget, that we should actually do fewer child abuse investigations ... that’s just unbelievable!’ Social workers sometimes conducted investigations for which they had not received funding. ‘We were unable to set those sort of priorities’, Wilson continued, ‘and so people just kept on doing them without the funding’.”²⁷

Treasury categorically deny that it is or ever was their position that the Department should undertake fewer child abuse investigations to stay within its budget.

The task for the Chief Executive Officer in negotiating the purchase agreement with the Minister requiring prediction requirements for the forthcoming year can be precarious in an organisation operating a demand-driven service with capped funding.

This dilemma is theoretically mollified in s9A of the Public Finance Act with a provision for supplementing estimates and income funds available for designated outputs, or under s12 from the same Act that gave discretion to the Minister of Finance, and failing that the Minister may report to the House of Representatives.

In this exercise it has become patently clear that there is, as claimed by the Department a –

²⁷ Dalley, Bronwyn, *Changing Philosophies and Practices, 1972-1992 Care and Protection Matters*, p.361

“Significant conflict between community expectations of Child, Youth and Family and its actual accountabilities under the purchase agreement.”²⁸

There is often a failure to grasp –

“The nature of the relationship between a Minister and their Department.”

This confusion has been typified with the tragic series of child deaths to abuse and violence and has aroused understandable public concern and indeed, fury. The public and the media perception is that both the Minister of Social Services and Employment and CYF are accountable for the achievements of successful outcomes for children, young people, their families, community providers, victims and society generally.

Under the Public Finance legislation, [and I trust that you will excuse me for citing at length this process with which you are totally familiar, in the event of this document having a wider dissemination, it is imperative that the public recognise the limitations and multiple demands on the state purse] the procedures are that the Minister of Social Services and Employment purchases a range of outputs (services) from the Department in annual appropriations for Departmental Output Classes (DOC) and Non-Departmental Output Classes (NDOC). In turn the Department both delivers and purchases services from other providers. The purchase agreement forms part of the Chief Executive Officer’s accountability documents and the Department is accountable for delivering or purchasing a specified range of outputs.

What has been described by the Child, Youth and Family as the Chief Executive’s dual responsibility is when she is confronted with the situation where on one hand there is the tension between a demand driven service and capped funding and also the obligation on the Chief Executive of ensuring the Department expenditure is managed in accordance with the financial regime created by the Public Finance Act. I am reliably informed that the Department has received legal advice that where the Chief Executive is unable to meet statutory expenditure obligations she may be in breach of her statutory duty but that the duties under the Public Finance Act are paramount in any conflict between her statutory responsibilities. As for example, pursuant to s7 of the Children, Young Persons and Their Families Act there is a statutory mandate as follows:

(2) *“In carrying out the duty imposed by subsection (1) of this section, the [Chief Executive Officer] shall –*

- (a) *Monitor, and advise the Minister on, the effect of social policies and social issues on children, young persons, families, whanau, hapu, iwi, and family groups:*
- (b) *Promote –*
 - (i) *The establishment of services (including social work services, family support services, and community-based services designed to*

28 Department of Child, Youth and Family Services, submission to the review, p.15

- advance the welfare of children and young persons in the community or the home); and*
- (ii) The adoption of policies (including the provision of financial support to parents, families, and family groups) – that are designed to provide assistance to children and young persons who lack adequate parental care, or require protection from harm, or need accommodation or social or recreational activities:*
- (ba) In relation to child abuse, -*
- (i) Promote, by education and publicity, among members of the public (including children and young persons) and members of professional and occupational groups, awareness of child abuse, the unacceptability of child abuse, the ways in which child abuse may be prevented, the need to report cases of child abuse, and the ways in which child abuse may be reported; and*
- (ii) Develop and implement protocols for agencies (both governmental and non-governmental) and professional and occupational groups in relation to the reporting of child abuse, and monitor the effectiveness of such protocols:*
- (c) Ensure, where ever possible, that all policies adopted by the Department, and all services provided by the Department, -*
- (i) Recognise the social, economic, and cultural values of all cultural and ethnic groups; and*
- (ii) Have particular regard for the values, culture, and beliefs of the Maori people; and*
- (iii) Support the role of families, whanau, hapu, iwi, and family groups; and*
- (iv) Avoid the alienation of children and young persons from their family, whanau, hapu, iwi, and family group:*
- (d) Establish and fund Care and Protection Resource Panels:*
- (e) Establish procedures to ensure that the cases of children and young persons in respect of whom action has been taken under this Act are regularly reviewed in order to assess the adequacy and appropriateness of that action:*
- (f) Ensure that persons providing services under this Act receive adequate training and comply with appropriate standards.*
- (g) Monitor and assess the services provided under this Act by the Department and by other organisations, groups, and individuals.”²⁹*

29 The Children, Young Persons and Their Families Act, 1989

Accountability

- (1) It is difficult to see the logic of restructuring the Department in 1991 into Community Funding Agencies (CFA) and CYF. This separation of DOC and NDOC resources made any form of integrated service development troublesome. At times, the two organisations were clearly operating against each other or at the very least not towards common goals. To a lesser degree this reality will always remain while the contracting and service groups remain separate. There should be one service group covering both DOC and NDOC. To get the integrated impact at the community level requires this.
- (2) There is both a need to acknowledge the current critical state of the Department, and an immediate need to develop (resurrect?) an environment in which professionalism can flourish.
- (3) Ironically in this organisation which in many ways seems to be stultifyingly risk-averse there are discernible trends which, if allowed to continue, could make the Department increasingly vulnerable to legal 'risk'.
- (4) The vulnerability could arise from a number of areas. Take for example the area of responses to Notifications or Referrals. The risks could be as follows:
 - (a) That the Department fails to meet its Statutory responsibility to all children/young people who are the subject of reports.
 - (b) That the information available to the Department and which forms such an influential role in their stratified levels of response does not accurately reflect the child or young persons circumstances and the possibility that they are in fact at a higher level of risk than assessed.
 - (c) The possibility that children/young people remain in situations which are detrimental to their wellbeing and safety.
 - (d) That the reporting of Care and Protection Notifications within the area declines as a result of an external knowledge/perception that lower urgency risk will not be responded to.
 - (e) That the true level of service delivery demand then becomes masked once again – undermining the gains of the Call Centre and implementation of a nationally consistent intake benchmark.
 - (f) That at risk scenarios are not responded to at 'low risk' end of the continuum, allowing for escalation of risk and potentially generating a need for a high level of intervention at a later point.

- (5) The negative effects on the Department's human resource as a result of frontline staff being further focused on high urgency/high intervention protection work without respite.
- (6) The perception of centralised control and prescription is seen as a disincentive to those required to take initiative and 'make things happen' at the local level leaving them feeling increasingly disempowered and hampered.
- (7) Many of those who made submissions commented upon the composition of the Executive Management Team having only one member (albeit a distinguished one) with Social Work experience but otherwise lacking those with a required level of institutional history, business awareness or appropriate philosophy for an organisation such as Child, Youth and Family.

From those who expressed that view, there was a perception of the dominance of 'managerialism' over the discipline of managing organisations with professional cultures.

- (8) A considerable volume of materials discussions and conversations received and heard over the course of this enquiry have been in relation to the question of staff performance. A proportion emanated from Social Workers themselves and were self deprecatory. In much that was conveyed to me, I felt it was more indicative and symptomatic of the work environment. From a more constructive point of view I was interested to access from staff themselves their views as to how the organisation could be improved.

This included a desire, which I'm sure is genuine, for professional satisfaction. For many this is not the case currently and that seems to be attested to with the difficulty of retaining and recruiting staff and declining performance. Another commonly expressed aspiration was a desire which is not presently being met; to get the Services for children and families which a Social Work Assessment has indicated as needed. That present failure, which is attributed to financial restraint, is clearly frustrating and disempowering for those who entered social work to assist children and families.

Further frustration was expressed at the perception of the dominant managerial culture with its emphasis on quantitative measures.

Terms and conditions of employment were seen as inadequate and unfair given the tasks being undertaken which at times are physically dangerous as well as stressful, particularly with regard to the complexity of problems which are now being presented. It was pleasing to note the general agreement that the Service itself needs to be professionalised to a much higher degree as well as the view that the current workload expectations on

staff are reaching the stage of being dangerous and that quality is often not satisfied.

- (9) I am inclined to think that while Area and Site Managers continue to be maligned, the fact remains that without the expertise and commitment of those people, in my view the organisation may well have collapsed some time ago.
- (10) I am of the view that if New Zealand is serious about the wellbeing of its children it must identify those systemic or structural problems which are generating problems in the first instance.

For some, this may be a painful exercise and indeed likely to arouse resistance. On the other hand it seems to me that it should be able to be carried out on the basis of being an honest appraisal and for the most important of all reasons, namely to enhance the value of services available to children and their families which is the *raison d'être* of the entire Department and the only justification for its existence!

- (11) I think that it may be beneficial if a suitably modified "Education Review Office" type organisation be established in order to reassure both public and departmental perceptions as outlined earlier in this chapter, particularly with regard to the quality of supervision. I anticipate too that such an exercise could assist public and media understanding as to the complexity of modern-day social work. It is after all possible to receive excellent "ERO" reports.

Recommendations

- 2.1 That an organisation like the ERO be established to monitor performance.**
- 2.2 That sophisticated and less time consuming contracting procedures be developed.**
- 2.3 That an internal audit be conducted of caregiving costs as compared to the Departments equivalent costs including overheads.**
- 2.4 That a system of demand-driven instead of capped funding be introduced for CYF client costs.**
- 2.5 That there should be one service group covering both DOC and NDOC to achieve greater integration between contracting and direct service delivery.**

- 2.6 That the Department be developed to implement a professional service, an executive management team with social work experience, business awareness, knowledge of institutional history and appropriate philosophy.**
- 2.7 That the Department enter into an honest alliance with the media in which the Department's activities are well publicised.**
- 2.8 That frank discussion and a culture of openness be promoted.**
- 2.9 That adequate funding be provided to revamp the service, recognising that:**
- (a) The Department needs adequate resources to provide the quality personnel required.**
 - (b) The Government should give a clear, unequivocal commitment for such funding.**
- 2.10 That in order to implement new technological systems and training, site offices could be closed on a staggered basis to carry out intensive training.**
- 2.11 That special costs be externally reviewed and audited immediately.**

Outputs and Outcomes

“We are reviewing our output classes (vote structure). The current output structure reflects the output pattern and philosophies of the two agencies that made up the new department – the Children, Young Persons and Their Families Service and the New Zealand Community Funding Agency. As a consequence of bringing these two agencies together, we have responsibility for statutory care and protection and youth justice services and a wider responsibility to support services in communities. Consequently we have also inherited a mixture of DOC funding and NDOC funding.”³⁰

The key objectives for the review are to develop a Vote structure that:

- *supports the Government’s objectives for Child, Youth and Family, and allows Government to identify and measure the contribution of our Outputs to the Government’s desired outcomes*
- *is consistent with our key priorities*
- *recognises the need to maintain quality services and manage demand driven costs and pressures*
- *ensures an appropriate mix and balance and clarity between DOC, to meet costs of direct service deliver, and NDOC, to ensure that services are available in communities to support community needs*
- *assists us to focus, to the extend possible, on the contribution of our outputs to Government outcomes*
- *aligns with our performance measures and organisational structure*
- *ensures that child protection, youth justice and adoption services (both Child, Youth and Family delivered, and delivered by the voluntary sector), and services to support children, families and communities are clearly located for funding purposes*
- *reassigns departmental overheads where this location is more appropriate.*

In a number of areas, we have a choice between providing services directly or by contracting work out to the voluntary sector. This ‘make or buy’ situation is not well defined in the current output structure, and needs to be clearly distinguished from situations where government is providing funding through us to voluntary and community agencies for other community purposes.

Confusion has arisen where essentially similar activities such as funding bednights may be charged either to DOC or NDOC. Programmes like bednights may also include funding of a range of activities and programmes, but these are not bundled distinctly.

³⁰ DOC: Departmental Output Class funding. In CYF this has generally been considered as funding for the direct delivery of services, although some DOC funding is also used to contract for services. NDOC: Non-Departmental Output Class Funding. In CYF this funding has generally been regarded as the funding from which voluntary sector social services contracted. NDOC funding entails a lesser level of accountability to Government for the services provided.

The Notifications and Referrals and Placements Review may be interested in receiving a copy of the Output Review discussion Paper.

We also plan an Output Pricing Review in time for 2001/2002. This will examine the price components of delivering each output and seek funding increases where these are necessary to preserve the quality of output delivery.”³¹

Clearly as outlined, both of those reviews are desirable. From numerous discussions from ‘contractors’ the present arrangements are clearly ‘confusing’ and in my view have largely created the critically diminished caregiver resource. If that urgency is accepted it would seem that the Output Pricing review should occur immediately.

The State Sector Reforms above referred to had a profound and radical character which in sectors such as Child Protection, required ‘cultural contortions’, many of which had not been successfully negotiated. These include distortions primarily set for financial reportage and supervision which may have been inappropriate and ultimately ineffectual as measurement indices.

Obviously, there are good arguments for sound fiscal management. These may require any Government to clearly define what it is it wishes to purchase, the expense and the amount of funds that they are prepared to pay for those services.

But the much vaunted notions of accountability and transparency can themselves become illusory if those public monies become shrouded in a cloak of fatuous outputs and nonsensical outcomes.

The complexity, subtlety and intricacy of child protection defies simplistic management planning.

With great respect it seems to me that whatever the amount of funding, it is essential that you as Minister, are supplied with real performance measures. This will always be difficult in the field of care and protection in particular because of the presence of so many variables in a young person’s life. Nevertheless I suggest to you that the present outcomes as described in performance indicators do not inform you as to whether they have changed anything.

To rectify that it seems essential that you be supplied with a specified series of objectives. The test is that specificity would be some measure of how you will know when you have got the result and more importantly the discipline of doing the job right the first time.

With our present focus on costs there seems to be no connective result.

Viewed cynically this would appear to be the paramountcy of the dollar instead of the child.

³¹ Child, Youth and Family submission to the review, p.17

The area is one in which I have no expertise. However, I consider myself to have been very fortunate to have been referred to Mr Michael Ross, a Performance Consultant who has had previous dealings with the Department or one or other of its forebears. He very kindly and generously has prepared for me the enclosed diagrams and commentaries. I commend this to you.³²

³² see Appendix 4

Children's Rights and Protections

“Adopting a child-centred protection system is not without legal obstacles. Any child protection system necessarily involves fundamental tensions between the efforts of the state to protect its young citizens while making standards for acceptable behaviour, which all citizens legitimately expect. The rights most often in conflict in child sexual abuse cases are those of parents versus those of the abused child, coupled by the state parens patriae power to intervene in families to protect children. The general rule currently used to mediate this conflict is that, although parents may become martyrs if they like, they are not free ... to make martyrs of their children.”³³

Essentially where rights are given to children they are designated to be activated by their care-givers or parents. The parens patriae doctrine still continues as both a protective doctrine and a barrier to children to access their rights.

The distinguishing aspect is unique to minors in this day when women and many minorities of culture have been given direct access to rights.

‘*Children are our future*’ is a catch phrase often echoed in the media, in academic journals and in everyday conversations. But what does this mean? This question is particularly topical or salient in New Zealand today given the recent (apparent) upsurge in child abuse and child deaths. These tragedies focus our attention on our government and non-government agencies and the efforts they put into the welfare aspects of children. The focus however does not end with a critical focus on the failures of these departments; it also spreads wider afield to the parental responsibilities that are obviously lacking in these prominent cases. Perhaps, it is even fair to say that we, the general public, the politicians and all concerned look immediately for the scapegoat, the persons, the body to point the finger at. There is then a public outcry for something to be done about the plight of these abused children in general terms. Generally we follow the pattern of all similar countries in this position, we ask for Inquiries or for Royal Commissions to provide an analysis, provide a scapegoat, to provide the solution to this problem. Meanwhile the media slowly burns itself out on that topic (unless there is another atrocity) and turns its front-page to something else. So the catch phrase becomes less important as a real issue and relegated to the problem of a scapegoat. The inquiries and Commissions continue and social and government agencies toil on, still unassisted, dreading the next atrocity.

The knee-jerk reaction to these tragedies, and media frenzied attacks on the agencies providing support for children continues in the public backdrop. They are the ambulance at the bottom of the cliff picking up the wounded and dead from the most recent tragedy and waiting to pick up the next.

That is not good enough!

³³ Roger JR Levesque Prosecuting Sex Crimes Against Children: Time for ‘Outrageous’ Proposals? (1995) Law & Psychol.Rev.59,68

New Zealand suffers from this ‘them (the agencies), them (the children) and us’ mentality – the ‘them’ in this case is the children who are the centre of this debate but who, remain side-lined by the knee-jerk reaction. We are not child-centred. We are child rights minded with the actual focus of those rights – children - being objectified and placed within a family centre

The child who is central to this debate is easily overwhelmed and disenfranchised (even more) by our society’s need to find the scapegoat, to have this knee jerk reaction.

There are no easy answers. There is, however, a broad framework within which to commence a truly significant grasp of the reality of ‘children are our future’ to create reality, rather than rhetoric.

“Over the last decade, however, more and more criticism has been levelled at this child-image. Gradually, but with increasing insistence, voices have been heard emphasising that children are in fact first and foremost human beings, and that therefore our relationship with them has to be based on respect for them as people. In legal terms this means that children are to be regarded as individuals with fundamental human rights. This new child-image is becoming ever more forceful and hence the present situation has become confused, and at times, even paradoxical. Indeed our relationship with children is still based on the dominant child-image, while, simultaneously, the new one is gaining influence. The Convention on the Rights of the Child reflects this situation.

Human rights have now formally been granted to children. Enshrining these rights in positive law is however not the end to the matter.”³⁴

So we have the rights of children enshrined in this international convention, however detailed the convention provisions are, it does not provide a recipe for success. The Convention provides essentially that children are to be given respect and dignity as individuals and provides a structure to enable the human rights of children to be recognised within the domestic jurisdiction of signatory party countries.

To enable a change from ‘child rights’ (generally) to child rights (individually) does involve, as Professor Verhellen suggests, more than a mere name shift but a complete practical paradigm shift in the thinking and practicalities of both the government and the bodies it gives powers to in assisting the children.

Stating that children are individuals and as such should be accorded full rights and respect and dignity is not to say that children are not vulnerable and in the need of care and protection. What it is advocating is that by centring our focus on the responsibilities of the state (organisation and legislation) without reference

³⁴ Professor Eugene Verhellen, Convention on the Rights of the Child: Background, motivation, strategies, main themes

to the central player in context – the children – we are in reality still following the knee-jerk reaction process.

Children can communicate their needs and rights and individual selves – within the context of their age, their culture and their developmental stratum.

What children cannot do is be positively protected when taken out of this context, and placed only as a part of the whole, seen as one with their family, rather than an individual who has needs, and deserves the respect of the family, and respect of the society, viewing them as individuals.

In reality the change to this child focus paradigm is not as an extensive task as one would first think. It involves using an existing (and ratified) blue print and accepting the positive legal framework and social processes already in place, and massaging the reality of the gaps then identified.

The blue print is UNCROC (United Nations Convention on the Rights of the Child) and the existing legal framework is embodied in many pieces of New Zealand legislation already. The processes for the positive implementation, if child focused, involves commitment by the government of resources, and support for the many willing, trained and caring professionals in the community already battling for the children in a variety of cultural and community contexts.

But the reality of this is far from a simple process as re-education is a primary issue.

Educating to focus on children as people, rather than children as appendages of their caregivers with a focus upon a societal structure for the care, protection, nurturing and respect of these individuals. This education has to begin with society as a whole as we need the will of society to view children with dignity and respect as individuals within the collective. It has been done in a varying manner in respect of other groups, for example, women who fought for their rights as individuals within society to be viewed with dignity, respect and individuality from their historical role. The Treaty of Waitangi has gained its rightful place in giving status to our own indigenous Maori, and that constitutional document has been given respect, dignity and a place within the framework of New Zealand human rights.

So why not children?

As long as our society continues on this myopic path of failing to focus upon the child, the longer we miss the focus of their needs and personhood – the ambulance will remain waiting at the bottom of the cliff.

But to enable this major shift, we need time, patience and clarity of purpose. We need to expend resources on true critical analysis, of the present systems that are showing flaws at their very bases.

“Although it is fashionable in some quarters to attack lawyers and their fees, the reality is that Social Policy and Social Legislation require legal input. Rights which are conferred on children and families by Parliament are empty rights if they cannot be implemented and enforced rapidly and meaningfully.”³⁵

³⁵ ‘Children’ No.34, Office of the Commissioner for Children, Family Law Section, p.17

Children's Rights and Protections

The rights and protections listed below include those provided in New Zealand by statute and case law. Reference is also made to two United Nations Conventions which New Zealand has agreed to be bound by.

Child Support Act 1991

Objects of the Act

(s 4)

- *(a) & (b) To affirm the right of children to be maintained by their parents and the obligation of parents to maintain them.*
- *(e) To ensure that parents with a like capacity to provide financial support for their children should provide like amounts of support.*
- *To provide legislatively fixed standards in accordance with which the level of financial support to be provided by parents for their children should be determined.*
- *To ensure that obligations to birth and adopted children are not extinguished by obligations to stepchildren.*

Children, Young Persons and their Families Act 1989

Objects of the Act

(s 4)

- *The object of this Act is to promote the wellbeing of children, young persons, and their families and family groups by—*
- *Establishing and promoting, and assisting in the establishment and promotion, of services and facilities within the community that will advance the well-being of children, young persons, and their families and family groups and that are—*
- *Appropriate having regard to the needs, values, and beliefs of particular cultural and ethnic groups; and*
- *Accessible to and understood by children and young persons and their families and family groups; and*
- *Provided by persons and organisations sensitive to the cultural perspectives and aspirations of different racial groups in the community:*
- *Assisting parents, families, whanau, hapu, iwi, and family groups to discharge their responsibilities to prevent their children and young persons suffering harm, ill-treatment, abuse, neglect, or deprivation:*
- *Assisting children and young persons and their parents, family, whanau, hapu, iwi, and family group where the relationship between a child or young person and his or her parents, family, whanau, hapu, iwi, or family group is disrupted:*
- *Assisting children and young persons in order to prevent them from suffering harm, ill-treatment, abuse, neglect, and deprivation:*
- *Providing for the protection of children and young persons from harm, ill-treatment, abuse, neglect, and deprivation:*
- *Ensuring that where children or young persons commit offences,—*
 - (i) *They are held accountable, and encouraged to accept responsibility, for their behaviour; and*
 - (ii) *They are dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial, and socially acceptable ways:*

- *Encouraging and promoting co-operation between organisations engaged in providing services for the benefit of children and young persons and their families and family groups.*

Principles to be applied in exercise of powers conferred under the Act

(s 5)

- Subject to section 6 of this Act, any Court which, or person who, exercises any power conferred by or under this Act shall be guided by the following principles:
 - (a) The principle that, wherever possible, a child's or young person's family, whanau, hapu, iwi, and family group should participate in the making of decisions affecting that child or young person, and accordingly that, wherever possible, regard should be had to the views of that family, whanau, hapu, iwi, and family group:
 - (b) The principle that, wherever possible, the relationship between a child or young person and his or her family, whanau, hapu, iwi, and family group should be maintained and strengthened:
 - (c) The principle that consideration must always be given to how a decision affecting a child or young person will affect—
 - (i) The welfare of that child or young person; and
 - (ii) The stability of that child's or young person's family, whanau, hapu, iwi, and family group:
 - (d) The principle that consideration should be given to the wishes of the child or young person, so far as those wishes can reasonably be ascertained, and that those wishes should be given such weight as is appropriate in the circumstances, having regard to the age, maturity, and culture of the child or young person:
 - (e) The principle that endeavours should be made to obtain the support of—
 - (i) The parents or guardians or other persons having the care of a child or young person; and
 - (ii) The child or young person himself or herself—
 - to the exercise or proposed exercise, in relation to that child or young person, of any power conferred by or under this Act:
 - (f) The principle that decisions affecting a child or young person should, wherever practicable, be made and implemented within a time-frame appropriate to the child's or young person's sense of time.

Welfare and Interests of Child or Young Person

Paramount

(s 6)

In all matters relating to the administration or application of the Act (other than Parts IV and V (Youth Justice and Youth Court Procedure) and sections 351 to 360 (appeals from decisions of the Youth Court), the welfare and interests of the child or young person shall be the first and paramount consideration, having regard to the principles set out in sections 5 and 13 of this Act.

Care and Protection Principles

(s 13)

- Children and young persons must be protected from harm, their rights upheld and their welfare promoted (s 13(a)).
- The primary role of care and protection of a child or young person lies with the child's or young person's family, whanau, hapu, iwi, and family group. Accordingly such a group should be supported, assisted and protected as much as possible and intervention into family life should be the minimum necessary to ensure a child's or young person's safety and protection (s 13(b)).
- The principle that it is desirable that a child or young person live in association with his or her family, whanau, hapu, iwi, and family group, and that his or her education, training, or employment be allowed to continue without interruption or disturbance (s 13(c))
- Where a child or young person is considered to be in need of care or protection, the principle that, wherever practicable, the necessary assistance and support should be provided to enable the child or young person to be cared for and protected within his or her own family, whanau, hapu, iwi, and family group (s 13(d))
- The principle that a child or young person should be removed from his or her family, whanau, hapu, iwi, and family group only if there is a serious risk of harm to the child or young person (s 13(e))
- Where a child or young person is removed from his or her family, whanau, hapu, iwi, and family group, the principles that,--
 - (i) Wherever practicable, the child or young person should be returned to, and protected from harm within, that family, whanau, hapu, iwi, and family group; and
 - (ii) Where the child or young person cannot immediately be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, until the child or young person can be so returned and protected he or she should, wherever practicable, live in an appropriate family-like setting—
 - (A) That, where appropriate, is in the same locality as that in which the child or young person was living; and

- (B) In which the child's or young person's links with his or her family, whanau, hapu, iwi, and family group are maintained and strengthened; and
- (iii) Where the child or young person cannot be returned to, and protected from harm within, his or her family, whanau, hapu, iwi, and family group, the child or young person should live in a new family group, or (in the case of a young person) in an appropriate family-like setting, in which he or she can develop a sense of belonging, and in which his or her sense of continuity and his or her personal and cultural identity are maintained (s 13(f))
- Where a child or young person cannot remain with, or be returned to, his or her family, whanau, hapu, iwi, and family group, the principle that, in determining the person in whose care the child or young person should be placed, priority should, where practicable, be given to a person—
 - (i) Who is a member of the child's or young person's hapu or iwi (with preference being given to hapu members), or, if that is not possible, who has the same tribal, racial, ethnic, or cultural background as the child or young person; and
 - (ii) Who lives in the same locality as the child or young person (s 13(g))
 - Where a child or young person cannot remain with, or be returned to, his or her family, whanau, hapu, iwi, and family group, the principle that the child or young person should be given an opportunity to develop a significant psychological attachment to the person in whose care the child or young person is placed (s 13(h))
 - An unborn child who has achieved a state where it could survive independently of the mother may be the subject of a declaration that the child is in need of care and protection as there is nothing in the Act to show an unborn child is excluded from the application of the Act. Interim custody was vested in the Director-General of Social Welfare (*In the matter of Baby P* [1995] NZFLR 577)

Youth Justice Principles

(s208)

Subject to section 5 of this Act (Principles section), any Court which, or person who, exercises any powers conferred by or under this Part or Part V (Youth Justice and Youth Court procedure) or sections 351 to 360 (appeals from decisions of Youth Court) of this Act shall be guided by the following principles:

- (a) The principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter:
 - (b) The principle that criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, whanau, or family group:
 - (c) The principle that any measures for dealing with offending by children or young persons should be designed—
 - (i) To strengthen the family, whanau, hapu, iwi, and family group of the child or young person concerned; and
 - (ii) To foster the ability of families, whanau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons:
 - (d) The principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public:
 - (e) The principle that a child's or young person's age is a mitigating factor in determining—
 - (i) Whether or not to impose sanctions in respect of offending by a child or young person; and
 - (ii) The nature of any such sanctions:
 - (f) The principle that any sanctions imposed on a child or young person who commits an offence should—
 - (i) Take the form most likely to maintain and promote the development of the child or young person within his or her family, whanau, hapu, and family group; and
 - (ii) Take the least restrictive form that is appropriate in the circumstances:
 - (g) The principle that any measures for dealing with offending by children or young persons should have due regard to the interests of any victims of that offending:
 - (h) The principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.
- (see specific rights of child or young person in this regard in ss 215 – 232)
 - (s 384) The Director-General may, in relation to any child or young person placed in a residence may use such means to discipline the child or young

person as are both reasonable and within the limits prescribed by the regulations made under that Act.

Questioning of Child Suspects

- It has long been recognised by the Courts and by Police General Instructions that special care needs to be taken by the questioning of juveniles on account of their immaturity and vulnerability: (see R v C 28/4/82, Chilwell J, HC Auckland T100/84; Police General Instructions C40, C41, and C42). This view has now been given statutory force by virtue of ss 215 to 232.
- Broadly, s 215 contains two sets of requirements:
 - (a) An enforcement officer questioning children or young persons about their possible involvement in an offence prior to an arrest, must first explain to them that:
 - (i) They may be arrested if, by refusing to give their name and address, they cannot be served with a summons;
 - (ii) They are not obliged to accompany the enforcement officer to any place for the purpose of being questioned; and
 - (iii) If they do agree to accompany him or her, they may withdraw that consent at any time.
 - (b) S 215 then requires that, whether or not they have been arrested, the enforcement officer must explain to them that:
 - (i) They are under no obligation to make a statement;
 - (ii) If they consent to make a statement, that consent can be withdrawn at any time;
 - (iii) Any statement can be used in evidence; and
 - (iv) They are entitled to consult with and make any statement in the presence of a barrister or solicitor and any other person nominated by them.
- Under s 218, the explanations required by s 215 must be given in a manner and language appropriate to the age and level of understanding of the child or young person.
- The effects of non-compliance with s 215:

Section 221 Children, Young Persons, and Their Families Act 1989 provides that, subject to ss 223 to 225, 234, and 244 of that Act, no oral or written statement is admissible in evidence in criminal proceedings unless:

 - (a) Section 215 has been complied with;
 - (b) The child or young person has been able to consult with a barrister or solicitor and then another person nominated by them with whom they wish to consult; and
 - (c) The statement has been made in the presence of a barrister or solicitor, any person nominated by the child or young person or, where the child or young person refuses or fails to nominate any person, another independent adult.
- A major reason for the exclusion of incriminating statements by the young accused in Lord v R (3/12/97, Gallen J, HC Wanganui T971618) was that the adult chosen by the investigating officer to be present during the questioning

of the accused (see ss 215(1)(f), 221(2), 222, 226, 229, 231, 232) was unaware of his duty to ensure the accused's understanding of the questioning process and support the accused during that process (see ss 222(4) and 231(4) of the Act). As stated by Nicholson J in *R v Wikitoa* (28/5/99, Nicholson J, HC Rotorua T990342), the nominated adult must take a proactive role and ensure that the young person is not disadvantaged because of youth. It is not sufficient for the nominated person simply to monitor the procedure or to be an experienced social worker or carer.

Commissioner for Children

(s 410 - 422)

- The Office of Commissioner for Children was established by this legislation.
- (s 411) Functions of the Commissioner include the following:
 - (a) To investigate any decision or recommendation made, or any act done or omitted, under this Act in respect of any child or young person in that child's or young person's personal capacity:
 - (b) To monitor and assess the policies and practices of the Department, and of any other person, body, or organisation exercising or performing any function, duty, or power conferred or imposed by or under this Act, in relation to the exercise or performance of any function, duty, or power conferred or imposed by or under this Act:
 - (c) To encourage the development, within the Department, of policies and services designed to promote the welfare of children and young persons:
 - (d) To undertake and promote research into any matter relating to the welfare of children and young persons:
 - (e) To inquire generally into, and report on, any matter, including any enactment or law, or any practice or procedure, relating to the welfare of children and young persons:
 - (f) To receive and invite representations from members of the public on any matter relating to the welfare of children and young persons:
 - (g) To increase public awareness of matters relating to the welfare of children and young persons:
 - (h) On the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter relating to the administration of this Act:
 - (i) To keep under review, and make recommendations on, the working of this Act.

Crimes Act 1961

(s 21)

- No child shall be convicted of any offence by reason of any act done or omitted to be done by the child when that child is under the age of 10 years.
- No child shall be convicted of any offence by reason of any act done or omitted by the child when of the age of 10 years but under the age of 14

years, unless the child knew either that the act or omission was wrong or that it was contrary to law (s 22). The practical importance of s 22 is significantly qualified by s 272(1) of the Children, Young Persons and their Families Act 1989 which prevents criminal proceedings being brought against children under the age of 14 years, with the exception of murder and manslaughter.

- (s 59) A child may only have force by way of correction, applied by a parent or a person who is in the place of a parent, which is reasonable in the circumstances. This is subject to s139A Education Act (see below).
- (s 182) It is an offence for anyone to cause the death of any unborn child, in such a manner that they would have been guilty of murder if the child had been fully born. Although the Court of Appeal *R v Henderson* [1990] 3 NZLR 174) did not determine at what point the foetus became a child for the purposes of the section, accepted that a 26 week old foetus was a child for the purpose of s 182. The Court stated at 179,
 - “...We are of the opinion that the ordinary and natural meaning of the word ‘child’ is such as to include the foetus in the present case.”
- (s 183) The procuring of an abortion by any unlawful means is an offence subject to imprisonment with a maximum penalty of 14 years. An abortion is conducted unlawfully unless, in the case of a pregnancy of not more than 20 weeks gestation, the person doing the act believes:
 - (a) That the continuance of the pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the woman or girl; or
 - (aa) That there is a substantial risk that the child, if born, would be so physically or mentally abnormal as to be seriously handicapped; or
 - (b) That the pregnancy is the result of sexual intercourse between—
 - (d) A parent and child; or
 - (ii) A brother and sister, whether of the whole blood or of the half blood; or
 - (iii) A grandparent and grandchild; or
 - (c) That the pregnancy is the result of sexual intercourse that constitutes an offence against section 131(1) of this Act; or
 - (d) That the woman or girl is severely subnormal within the meaning of section 138(2) of this Act.
- The declaration which medical practitioners may make at their graduation includes the statement that the practitioner will maintain the utmost respect for human life. This declaration apparently would be read subject to the right to abort an unborn child where it is lawful (as described above) – (Taken from Otago University Faculty of Medicine).

- (s 152) Everyone who as a parent or person in the place of a parent is under a legal duty to provide the necessaries for any child under 16 years.
- (S 154) It is an offence to unlawfully abandon or expose a child under the age of 6 years.
- (S 195) It is an offence to, having custody, control, or charge of any child under the age of 16 years, to wilfully ill-treat or neglect the child or permits the child to be ill-treated in a manner likely to cause him unnecessary suffering, actual bodily harm, injury to health or any mental disorder or disability.

Practice Note on Sexual Offence Cases involving Child Witness or Child Defendants (2 November 1998)

The courts are especially concerned that cases involving child witnesses or child defendants (which includes those dealt with indictably), are dealt with promptly. The Practice Note then describes procedures to be followed to facilitate this aim.

Criminal Justice Act 1985

- (S 8) No Court shall impose a sentence of imprisonment on a person who at the time of the conviction is under the age of 16 years except for a purely indictable offence.
- (s 139A) No person shall publish in any report of any criminal proceedings in any court, the name of any person under the age of 17 years who is called as a witness in those proceedings or any particulars likely to lead to their identification (except that nothing in this section prevents the publication of the name of the defendant or the nature of the charge).

Domestic Violence Act 1995

- (s 4) The Act applies to who are or have been in a domestic relationship, which is defined to include family members, those sharing a household and those having a close personal relationship.
- (s 3) “Domestic violence” in relation to any person means violence against him or her by any other person with whom he or she is, or has been, in a domestic relationship. In this context, “violence” means: physical abuse; sexual abuse; or psychological abuse, including, but not limited to, intimidation, harassment, damage to property, and threats of physical abuse, sexual abuse, or psychological abuse.
- (s 9(2)) A minor may make an application for a protection order (17 year old or a person who is or has been married) .
- (ss 7(2) and 81) Where the person who is eligible to apply is a child, the application must be made by representative who may be a lawyer appointed by the Court and such lawyers fees may be paid for out of public money .

- (s 7(3)). Nothing in s 7(2) prevents a child on whose behalf an application for a protection order is made by a representative from being heard in the proceedings; and where the child expresses views on the need for and outcome of the proceedings, the Court must take account of those views to the extent that it thinks fit, having regard to the age and maturity of the child.

Education Act 1989

- (s 24) Where the parent of a child required by the Act to be enrolled at a registered school fails or refuses to ensure that child is enrolled, the parent commits an offence.
- (s 139A) No force may be used by way of correction or punishment, towards any student or child enrolled at or attending a school, institution or centre, unless that person is the guardian of the student or child.

Evidence Act 1908

Cases of a Sexual Nature

- The statutory scheme details the process by which persons under the age of 17 years may give evidence in cases involving charges of a sexual nature. The relevant statutory provisions, which need to be read together, are the Evidence Act 1908, ss 23C-23I, the Summary Proceedings Act 1957, s 185CA and the Evidence (Videotaping of Child Complainants) Regulations 1990. The latter regulations set out the requirements that must be followed if it is proposed to introduce a child complainant's evidence-in-chief by way of pre-recorded videotape. Other methods contemplated by s 23E of the Evidence Act 1908 include the use of closed circuit television or allowing the complainant to testify behind a screen or similar device. In an important decision the Court of Appeal, exercising its inherent jurisdiction, held that these modes of evidence may be extended to offences falling outside the nominated offences (*R v Moke & Lawrence* [1996] 1 NZLR 263 where children were allowed to give evidence by videotape in relation to assault charges).

Gaming and Lotteries Act 1977

- (s 116ZE) It is an offence to sell tickets to instant games, such as 'Instant Kiwi' to persons under 16 years of age. There are however no restrictions placed on the sale or purchase of tickets in New Zealand lotteries such as 'Lotto'.

Guardianship Act 1968

- (s 23(1)) In any proceeding relating to custody of or access to a child, the first and paramount consideration is the welfare of the child

- The wishes and interests of the parents are ignored if the child's welfare is at stake (*re the three B children* (Family Court, Napier, CYPF 041/055/91, 26 May 1992, Judge Inglis QC)).
- (s 23(1)) The Court must ascertain the wishes of the child, if the child is able to express them, and must take those into account to the extent the Court thinks fit, having regard to the age and maturity of the child (s 23(2)).
- (S 25) A female child of whatever age, may consent or refuse to consent to an abortion.
- (s 29A) The Court may, if satisfied it is necessary, request preparation of medical, psychiatric or psychological reports on the child in question to assist the Court.
- (s 30) The Court may appoint a barrister or solicitor to represent any child who is subject of or is otherwise a party to the proceedings. If the proceedings seem likely to proceed to a hearing, the Court shall appoint a barrister or solicitor unless the Court is satisfied the appointment would serve no useful purpose.

Hague Convention on Civil Aspects of International Child

Abduction

- Signed on 25 October 1980.
- Implemented pursuant to the Guardianship Amendment Act 1991 – In force 1 August 1991.
- Principles of the Convention include:
 - The interests of the children are of paramount importance;
 - Children should be protected from the harmful effects of abduction;
 - Children must be promptly returned to their originating country;
 - The laws relating to the rights of custody and access in the originating country must be respected in all other convention countries.
- Where an application is made for the return of a child abducted to New Zealand, there are a number of defences which the child may exercise against he or she being returned to the Contracting State which the Court may consider including:
 - The child consented to or acquiesced in the removal;
 - The child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of the child's views (s 13).

Immigration Act 1987

- (s 59) Where a removal order is being executed, if an unmarried person under 17 years of age is removed from New Zealand otherwise than in the company of a parent or guardian, an immigration officer must make all reasonable efforts to contact a parent or guardian of the person and to agree on suitable travelling arrangements for the person.
- (s 140) Where any person under 17 years of age is detained in custody pursuant to the Immigration Act, the person responsible for the detainees

custody, shall inform the detainee's responsible adult, parent or guardian of the detainee's right to contact a solicitor or counsel and shall on request of the detainee or their responsible adult, parent, guardian, solicitor or counsel take all reasonable steps to enable that person to visit and communicate with the detainee in private.

Racing Act 1971

- It is an offence to receive, register or take on account any bet by any person apparently under the age of 18 years.

Sale of Liquor Act 1989

- (s 155(1)) It is an offence to sell or supply any liquor on any licensed premises to any person under the age of 18 years of age.
- (s 160(1)) It is an offence to purchase or acquire any liquor from licensed premises with the intention of supplying it to a person under the age of 18 years.
- (s 162) It is an offence for a minor to purchase liquor from any licensed premises.

Smoke Free Environments Act 1990

- (s 30(1)) It is an offence to sell any tobacco product to a person who is under 16 years of age.

Summary Offences Act 1981

- (s 10A) It is an offence to ill-treat or wilfully neglect a child under the age of 17 years, being a paid or unpaid staff member of a residence under the Children, Young Persons and their Families Act 1989 or being a person to whom the care or custody of a child has been lawfully entrusted.
- (s 10B) It is an offence for a person who is a parent or guardian having care of a child under 14 years, leaves the child without making reasonable provision for the supervision and care of the child for a time that is unreasonable or under conditions that are unreasonable having regard to all the circumstances.

United Nations Convention on the Rights of the Child (UNCROC)

- Signed by New Zealand in 1989
- Ratified on 13 March 1993 with the result that New Zealand is committed to implementing UNCROC principles into New Zealand Law.
Its articles provide amongst other things, the following:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (Article 3.1).

State parties shall ensure a child is not separated from their parents against their will, except when competent authorities determine that the separation is necessary for the best interests of the child. This may be necessary where the parents are living separately and a decision must be made as to the child's place of residence (Article 9.1)

State parties shall respect the rights of the child who is separated from one or both parents to maintain personal relationships and direct contact with both parents on a regular basis except if contrary to the child's best interests (Article 9.3).

State parties shall assure that a child who is capable of forming their own views has the right to express those views freely in all matters affecting them, with the child's views being given due weight in accordance with their age and maturity (Article 12.1).

The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or indirectly, or through a representative in a manner consistent with the procedural rules of national law (Article 12.2)

Children shall not be subject to arbitrary or unlawful interference with their privacy, family, home or correspondence (Article 16.1).

State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child (Article 18.1).

The child shall have the right to education (Article 28) directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential (Article 29).

The child shall have the right to protection from all forms of sexual exploitation or abuse (Article 34) and all other forms of exploitation detrimental to any aspects of the child's welfare (Article 36).

- In *Tavita v Minister of Immigration* (1993) 11 FRNZ 508 Cooke P (at 517) held with reference to New Zealand's obligations under amongst other instruments, UNCROC, that a failure to give practical effect to international instruments to which New Zealand is a party may attract criticism and that legitimate criticism could extend to New Zealand Courts if they were to accept the argument that, because a domestic statute giving discretionary powers in general terms does not mention human rights, norms or obligations, the Executive is necessarily free to ignore them.

Acknowledgement

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Chapter 3

The Quality of Social Work in Child Youth and Family

The CYF submission acknowledges the extreme difficulties faced by their social workers.

The issues confronting our staff are among the most difficult that any social workers deal with. The work is complex and there are few absolutes. Staff members deal with ambiguous information, grey areas and find solutions among options that are less than ideal. The work is high risk. Mistakes are dangerous and costly, both in human and financial terms.³⁶

It goes on to discuss:

The difficult professional judgements that social workers are required to make every day in assessing risk and in making safe decisions that are in keeping with good practice and the principles of the Act³⁷.

As the coalface presence of the organisation, social workers tend to take the brunt of criticism directed at it.

Many staff leaving Child, Youth and Family attribute their decision, in part, to the cumulative, caustic effects of negative media portrayal and poor public perception.³⁸

There is considerable criticism of social work in other stakeholder comments to this review. Most stakeholders, though, have acknowledged in some way, however small, that the problem is systemic.

We acknowledge that there are some very skilled and experienced people working within CYFS and the struggle for the appropriate resources is continuous³⁹.

There are people .. (in the Department) .. who I hold in very high esteem as extremely competent, dedicated and who deal with issues very effectively.⁴⁰

Some really good things – creative. Would hate to see a report blaming the social workers.⁴¹

If it is quality of service provision we are seeking, however, then it is through the quality of the social workers that this will be manifested.

³⁶ CYF submission p8

³⁷ Ibid p10

³⁸ CYF submission p11

³⁹ Quote from stakeholder

⁴⁰ *ibid.*

⁴¹ *ibid*

Social work in a situation of fiscal restraint – under-resourced and overworked

One might ask how a social worker, beset by unmanageable demands on their time, a barrage of criticism from the public and the media, and complex and ever-worsening social problems, manages to retain a sense of integrity or dignity, or to maintain their personal wellbeing. It is small wonder that social workers “tend to stay ... for two years before moving on”⁴². There needs to be a high level of job satisfaction if social workers are to be retained and the levels of burnout and stress minimised.

Few current social work staff made submissions to this review, although their views were represented by the PSA. Those staff or ex-staff submissions received made insightful and revealing comments, as did CYF themselves. Submissions from stakeholders in general speak of unmanageable caseloads, extra administrative duties, and unsafe practice presumably as social workers attempt to cut corners and spread themselves thinly.

*(The social work role) gradually included typing, computer work, client financial plans, caregiver payments and administrative tasks*⁴³.

*It is our impression that sometimes CYF workers struggle under ridiculously high caseloads. However, when you add to that lack of training and experience, poor attention to professional standards, the low status of child protection work and staff retention problems, you have a recipe for disaster*⁴⁴.

There has been a litany of examples of social workers being unavailable, failing to comply with legal or agreed timeframes, dropping children off at new placements and having no contact until a crisis occurred. Families felt they were treated with a serious lack of respect, judges were extremely concerned by the quality of work presented to them and agency staff were frustrated in their efforts to work together. One Family Court decision submitted to the Review reads thus:

*The social workers have chosen to move the child in advance of the hearing. They have done so against the wishes of the counsel representing that child and ... prior to the report being completed and released. I have very serious concerns about that behaviour. If Parliament had intended that the Department have ‘carte blanche’ over the lives of children taken into its care it would have said so.*⁴⁵

Concerns about the professionalism of social workers mainly centred on the issues of training, qualification, and supervision.

⁴² CYF submission: p23

⁴³ Quote from stakeholder

⁴⁴ *ibid.*

⁴⁵ *ibid.*

In the Government's response to the Mason Review, the statement was made that "by the year 2000, 90% of social work staff (would) have a professional [CQSW or level B] qualification, with an endorsement to indicate competence in CYP Service social work practice".⁴⁶ Jenny Shipley, as Minister of Social Welfare, stated in the Introduction: "The total upskilling of the New Zealand Children and Young Persons Service to be undertaken over the next few years will provide the impetus for higher quality service."⁴⁷

That in fact only 44% of front-line staff and only 55% of new recruits have a B level social work qualification⁴⁸ is perhaps a sad indictment of the 1990s. In their submission, CYF openly (and refreshingly) acknowledge the difficulties of recruitment, especially to outlying sites and because of the low pay scales and the complex and stressful nature of the work⁴⁹. Concern about this state of affairs was expressed in many of the submissions.

*An inadequately trained professional is if anything worse than an amateur, because of the power invested in their professional status.*⁵⁰

Much concern has been expressed about the lack of care and protection content in tertiary social work courses. We were informed by a senior official that CYF preferred to train its own staff in this and to this end provided a full introductory training on the legislation, child abuse and the social work task and human development which social workers complete in their first year. While there was mostly praise for the quality of these courses, attendance at them appeared to be difficult to achieve, due to casework demands. Efforts to establish the completion rates of first year social workers, however, revealed that these figures are not collected and that Area Managers have had jurisdiction over who can be released for training.

*The disparity between the social work education provided by academic learning institutions and the requirements for CYF social workers (combined with the superficial/inconsistent provision/variable presentation of in house social work training) means that social workers glean "bits" of CYF social work practice information from a variety of sources "along the way". This results in social workers working and making assessments, judgements, decisions based on incomplete professional knowledge. We all know that "a little knowledge is a dangerous thing" leading to dangerous and unsafe practice in which social workers are not even aware of the level/extent of their own ignorance! Result: Unsafe practice.*⁵¹

It seems more logical that this training be made compulsory in a social worker's first year. Stakeholder recommendations include quarterly intake and residential training of new staff, augmenting of the basic B qualification to a three year course, including specialisation in care and protection and human development,

⁴⁶ The Govt's Response to the Report of the Ministerial Review Team 1992

⁴⁷ *ibid*

⁴⁸ CYF submission

⁴⁹ *ibid*

⁵⁰ Quote from stakeholder

⁵¹ *ibid*.

and the registration of social workers following a competency process, such as that developed by the ANZASW.

Supervision and support

Casework supervision is an important means of coaching and enhancing social work practice. The boosting of numbers per social work team (led by a supervisor) to over five in the early 1990s and the addition of new administrative tasks to the role appears to have seriously compromised the quality of this work. Turnover rates appear to mean that supervisors are employed after fewer than five years of practice. One person felt it was a matter of “the blind leading the blind”.⁵²

The quality of supervision is directly related to the future performance of the professional social worker. ...Supervisors are field instructors, but they are not taught how to teach. ...Analytical thinking (taught by supervisors) leads to professional autonomy.

Child Youth and Family need to promote a strong clinical supervision focus by employing social work supervisors who are professionally qualified ... trained and practice experienced ...who can provide clinical education (in training and supervision) that will assist social workers to transfer learning (through learning how to learn/meta learning/generalising learning from one situation to another) and to develop a professional awareness of self. Then we will finally have safe social work practice!⁵³

A recent agreement between CYF and tertiary institutions has meant that supervisors can now access tertiary-level training in supervision, which one group of graduate social work students praised in their submission.

There have been concerns raised about the replacing of the Practice Consultant role with that of Quality Practice Analysts (QPA). Practice Consultants have taken responsibility for a wide range of practice quality issues in recent years. Some of these contribute to safe practice (e.g. Dangerous Situation protocols, Practice Reviews, fieldwork teaching, consultation and facilitation of complex casework meetings), and others to the support of social workers (e.g. Critical Incident Stress Management and the Employment Assistance Programme). The Quality Practice Analyst role, on the other hand, appears to be limited to case auditing. One Practice Consultant said:

The Quality Analyst role as outlined in the (Area Network Structure) proposal is very narrow in focus. It raises the question who is going to attend to (those) pieces of work that are more often than not carried out by Practice Consultants and/or Quality Advocates currently? ... If more of these tasks are forced in to the operational line ... the more stressed, frustrated and dissatisfied staff will become. It is a recipe for disaster.⁵⁴

⁵² *ibid.*

⁵³ *ibid*

⁵⁴ Quote from stakeholder

The way ahead – professionalism and image, defining the role

The issue of child safety and wellbeing deserves a markedly better service than that currently able to be provided by CYF's social work resources. And CYF social workers deserve the opportunity to learn and practice their profession in a way that is enhancing of job satisfaction and self-image. The Department of Child, Youth and Family Services has made a preliminary step in this direction by approving in principle an increase in social work pay, to be implemented as funding becomes available. This will presumably achieve its eventual goal of removing the disparity between CYF and other social worker remuneration.

Better recognition and practice of care and protection social work as a profession will also require a well co-ordinated and seriously implemented process of registering and suitably rewarding CYF social workers, once they have achieved (and are able to maintain) a certain standard of practice. This would require commitment from Parliament and CYF management, however, in terms of financial support, time allowance and concerted application of the standards. The ANZASW propose the establishment of a Registration Board linked through an Approvals Committee 'responsible for assessing applicants and granting registered (statutory) status to social workers'. This would allow them to practice in settings including statutory and public sector agencies⁵⁵.

The best work is done in this Service when:

- *The social worker's caseload is manageable*
- *The supervisor supports the social worker by having regular, planned supervision sessions which address the issues that impact on the social worker's ability to manage and account for the work they do with clients*
- *Training and development plans are in place for all staff that are given priority and actioned accordingly⁵⁶.*

More clarity and simplification of the social work role as prescribed by the legislation and outputs could also lead to social workers gaining a better sense of a job well done.

Recommendations:

3.1 That all social work staff and managers be required to complete the full introductory training programme by the end of 2001 with the complete support of management; that exceptions to this can be made where prior learning can be proven; and that staff receive a certificate on completion which entitles them to participate in further advanced training programmes.

⁵⁵ ANZASW 2000: 3

⁵⁶ Quote from stakeholder

- 3.2 That all new social workers and managers complete the full introductory training within their first year of employment, with the complete support of management.**
- 3.3 That completion of the introductory training programme is a requirement of that person's Performance Appraisal.**
- 3.4 That within three months the Department provide the Minister of Social Services and Employment with a new plan of how they are to develop a fully skilled social work staff, including consideration of reintroducing residential training and individual staff training plans.**
- 3.5 That the introduction of social worker registration be given urgency.**
- 3.6 That the work being done on the registration of social workers with ANZASW is endorsed and fully supported by Child Youth and Family management.**
- 3.7 That by mid 2002 social workers should not be able to exercise statutory powers except when co-working with registered social workers and/or members of the Police.**
- 3.8 That the Department set an agreed percentage of registered staff as a goal which must be realised by mid-2002.**
- 3.9 That senior social workers supervise, coach and support no more than four fulltime social workers.**
- 3.10 That National Office staff spend time on placement at sites in order to gain a better understanding of front-line reality.**

Chapter 4

Referral and Notification

The occurrence of child abuse and neglect has probably been with us from the beginning of human history. It is likely to have been one of our deeper and darker secrets, neither its realities nor its perpetrators being easy to confront and, as a result, it has tended to be ignored or denied⁵⁷. Awareness of the physical and emotional cost to children and the impact on their adult lives has improved public acknowledgement over the past 50 years, thanks primarily to victims who have spoken out. Credit must also go to the medical and social work professions, the women's movement and the children's rights movement.

*Individuals and society ... have a responsibility to be aware of our tolerance of violence within families, the effect of poverty on children and families, our lack of respect for children's rights, and so on.*⁵⁸

For the child living in pain, confusion, fear, terror, extreme danger and/or unhappiness in the privacy of a closed family system, referral to CYF and a subsequent investigation into their circumstances, is a potential lifeline. It also carries elements of risk, in that the child may, in disclosing aspects of their circumstances, be placing themselves at further risk, this time of severe reprimand by the perpetrator(s) or exclusion from the family. Or, should the child not choose, for those reasons, to disclose abuse the investigation may erroneously come to the conclusion that the child is not at risk and the case closed.

There is also the possibility that an anxious investigative team will err on the side of caution and assess that a child is at more serious risk than he or she actually is. Perhaps the child will be removed from its parents as a result.

Statutory investigation into a report of child abuse or neglect carries enormous responsibilities. Collecting accurate information and attempting to ascertain what is really happening in the life of a child can be extremely difficult, as family and sometimes agency systems barricade themselves against exposure. Determining which behaviours are defensive by habit and which are designed to hide evidence also requires considerable skill. Indecision can be the result.

*There are "grey area" cases caused by complex, unclear, ambiguous or unreliable information. Social workers can become hesitant in their decision-making and there is potential for errors. Decisions made under these circumstances can be characterised as 'decision-making under uncertainty'. These professional decision-making issues can impact on threshold management and require high quality professional supervision to ensure that appropriate and safe decisions are made*⁵⁹

⁵⁷ Herman J. 1994 Trauma and Recovery London: Pandora

⁵⁸ Quote from stakeholder

⁵⁹ CYF submission p30

These are not the only types of issues that investigative social workers struggle with. CYF acknowledge that:

There is a tension between resource considerations (capacity) and professional decisions (client needs). A variety of threshold management practices (depending on population, site and personnel characteristics) have been adopted as a means of managing demand-driven workloads within capped resources.⁶⁰

Sections 15 to 19 of the CYP&F Act are the legislative basis for the notification process followed by CYF. The department has developed a process for accepting notifications involving three stages: intake, investigation and assessment.

Intake

There are two intake pathways for notifications. A section 19 referral (CYP&F Act 1989) is made directly to a Care and Protection Co-ordinator by a Court or other agency concerned about the welfare of a child or young person. This must either be referred on to another agency or result in a Family Group Conference. The Co-ordinator may request an investigation in order to decide which option to take. Section 19 reports account for 4.36%⁶¹ of all notifications.

Section 15 referrals, on the other hand can be made to a social worker or a member of the police or through a phone call to CYF's National Call Centre at which point the intake worker makes an initial assessment, based on the information provided. This decision concerns whether there will be no further action, referral on to a more appropriate agency, or the call will be accepted as a notification.

If accepted as a notification, then a further decision is made about the urgency with which the case must be allocated to a social worker and investigated. Categories for this are: Critical (same day), Very Urgent (within 2 days), Urgent (within 7 days), and Low Urgency (within 28 days).

One of the key purposes of the new National Call Centre was to develop “a consistent approach to intake management that separated the professional decision about the most appropriate response (needs based) from the resource decision (based on capacity)”⁶². It has the potential to do this extremely well and to eventually provide the country with a 24-hour professional service that will improve Departmental responsiveness and public confidence. This should pave the way for a more consistent and professional service throughout the investigative processes, although there is much yet to be done in this area.

One current observation being made is that the Call Centre may be exercising a lower threshold than some sites have exercised in the past, raising their intake

⁶⁰ *ibid.*

⁶¹ Figure supplied by CYF's National Office Dec 2000

⁶² CYF submission p34

levels beyond that which they can manage. In my view, raising thresholds is a flawed strategy clearly in breach of the statutory function of the CEO.

Investigation and Assessment

When a case is accepted as a notification it is then allocated to a social worker at the local site office who must investigate the matter further to establish whether the child is at risk. CYF have well-developed procedures and practices for investigation and assessment of notifications. Investigative social workers are supported by a range of publications and tools including “Recognition of Child Abuse and Neglect: Tirohanga Tukino Tamariki” and the more detailed guidelines in the Care and Protection Handbook. The Risk Estimation System (RES) is a tool provided to be used after an incident or condition of maltreatment has been substantiated in order to assess the level of ongoing risk to the child.

The Police and CYF Serious Abuse Teams and the Evidential Interviewing Units attached to Specialist Services Units, designed to support the forensic investigation of child abuse, appear to be well developed and professionally focussed, although there is no doubt some variation in the quality of work done within these units. Specialist staff are also available to offer counselling to children and young people in crisis.

The social worker should also have access to and use the expertise of other professionals, such as that of a paediatrician in the case of suspected sexual abuse or physical injury. CYF’s legal staff should be readily on hand for all court work, although there have been suggestions that this is not always so. Cultural expertise is also essential, allocation to a social worker of the same cultural origins being the preferable way of achieving this, but consultation with a cultural advisor or supervisor can presumably also achieve a good result.

Every new notification should also be taken to a Care and Protection Resource Team, composed of a range of professionals from the local community, who can use their local and professional knowledge to advise and support the social worker(s). The procedures, use and effectiveness of these teams seems to vary considerably from Area to Area, depending perhaps on management commitment to them.

It appears to be the professional training and experience of the workers and the quality of the supervision available to the process, which are the real keys to the quality of investigation and assessment work. Variations in personal attitude, stress level and professional training and experience also impact on the quality of decisions made. CYF terms these the “social worker’s threshold”. “If a person’s threshold is low then they need little risk or strength of evidence to decide to take action. If a person’s threshold is high they need a lot of risk or strength of evidence before they decide to take action”⁶³. They propose acknowledgement of

⁶³ CYF submission p30

a social worker's threshold and quality of procedure as a means of achieving better consistency.

Volume of work

It would seem, however, that the greatest risk to the quality and speed of the assessment process currently is the volume of notifications, which exceed the ability of staff and resources to respond in a timely manner. "The pressure for responding to the critical, very urgent and urgent categories remains high, as volumes for these three categories remain consistently above the levels set in the purchase agreement."⁶⁴ Other bureaucratic enigmas and administrative demands add to the pressures on social workers and their supervisors.

One supervisor of an investigative team drew analogies between other emergency services and CYF. He noted that the Police are able to work on a case fulltime until it is resolved, and that firemen sit waiting for the next call, rather than rushing from fire to fire, quelling one blaze temporarily and returning later to damp it down again.

Staff turnover appears to be a key to the management of incoming work. The same supervisor had managed 27 social workers in 4.2 positions over a 44 month period, averaging 7 changes per position. Most of these social workers would have needed to be trained in the work, or at the least oriented to the position. One site described new staff members as "a huge drain on resources" and estimated that it takes an investigative social worker two to three years to learn the job well.

The loss of an investigative social worker and a break of several weeks before a replacement is found, means an accumulation of unattended cases which is very difficult to reduce. Some managers exercise the cost-saving technique of forestalling the advertising of a vacancy thus saving the payment of a salary for a short period. This is clearly counter-productive to quality social work and caseload management. Such a practice would seem to lend weight to the claim that 'managerialism' has become the dominant element in the Department.

One site office, urban rather than rural, maintains a list of experienced social workers interested in working there. All vacancies are filled immediately. This site claimed no unallocated cases at all but a senior staff member said that the situation would change dramatically if they were without a team member for more than a month.

Unallocated cases

There seems to be some confusion as to what constitutes an unallocated case and how many there are. Practice varies from site to site. Certainly it appears that efforts are generally made to establish that the child concerned is safe in the meantime. There have been claims that once this process, known as activating a

⁶⁴ *ibid.*

case, is done, some Areas have then ceased to count it as unallocated. In other offices, cases are allocated to social workers, despite their inability to attend to them.

Other offices appear to be more creative, forming emergency teams to manage the unallocated cases until such time as they can be attended to. One early response was for a Community Liaison Social Worker to manage low urgency cases in collaboration with other agencies involved in the case⁶⁵.

Figures for unallocated cases given by CYF in their submission are misleading as they appear to give them as a monthly figure rather than an accumulative one. On 31 October 2000 a total of 3379 unallocated cases were identified, most of these being in the urgent or low urgency categories⁶⁶.

Agencies making notifications have expressed concern for the safety of their clients as well as frustration on their behalf, as they wait anxiously for contact from the social worker, or are unable to move forward until the investigation has occurred.

Many families that we see as outpatients are in crisis because of the disclosures that have been made. Although the child or young person may be 'safe' in that the offender has been evicted from the house or arrested by the Police, the situation is enormously difficult, particularly for the caregiver or those members of the family who choose to believe the allegations. These persons are often in great need of social work support, to enable them to support the child or young person and to continue to function effectively as a family while the investigation proceeds. Even when there is apparent safety at the time we notify the department, the pressures are such that the situation may change rapidly.

Unfortunately, in these situations, because the child or young person is 'safe', it is often weeks before a social worker contacts the family. Even then, it is often by telephone.⁶⁷

Less serious cases can escalate:

'Low level' abuse, including emotional abuse, over time increases the trauma to the child. Addressing this later will take more resources than when an earlier investigation is made.⁶⁸

I find this situation deplorable and can think of no other solution than emergency funding and procedures to reduce unallocated cases to zero within the next 3 months. Response times decided at intake need to be strictly adhered to if care and protection services are to have any credibility.

⁶⁵ Henderson M. 1996

⁶⁶ Question 19284 to the House for written answer lodged 30 October 2000

⁶⁷ Quote from stakeholder

⁶⁸ *ibid*

Reporting back

Under s17(3) of the Act, the social worker should, unless 'impracticable or undesirable' inform the notifier of whether the case is to be or has been investigated and whether there is to be any further action. For agencies that refer, failure to do this gives rise to further frustrations.

The notifying agency does not know if the concerns are being addressed and what plans are to be made for working with the child and family.⁶⁹

The proposed action may not be communicated to other services involved including the referring service. Do they initiate or maintain supportive work after the notification?⁷⁰

The period of time between notification and the eventual outcome of an investigation can be a trying one for clients and other agencies.

... even after an intake worker has judged that a CYF investigation should occur, CYF is relying on community providers to monitor the situation and provide services until a) the case has been allocated; b) properly investigated/or c) an intervention plan is instituted. If this was an explicit arrangement where-by community organisations were fully aware of the role they were playing, agreed to play the role and were able to negotiate funding for that service, this would not be such a serious issue.⁷¹

Outcomes of investigations

The purpose of an investigation is to determine whether abuse or neglect has occurred. The purpose of assessment is to decide whether the child or young person is at risk of this reoccurring, for which purpose the Risk Estimation System has been instituted. While there appears to be considerable support for this tool, one agency working closely with CYF workers, claimed to have never heard a case described in the language of RES, suggesting that it has not had an impact on thinking or practice. Social workers stated that recording the RES assessment on CARES (Computerised Recording Application for Risk Estimation system) takes a great deal of time and they usually do it as they are closing the case, as an administrative requirement, rather than using it as a professional tool. This is ridiculous.

As a result of an investigation, with or without the use of RES, the social worker must form a belief as to whether or not the child is at the ongoing risk of abuse or neglect under the definitions of s14 (CYP&F Act). If they consider that this is so, they must refer the case for a Family Group Conference (FGC). If the child is not considered safe, then the situation must be addressed immediately.

⁶⁹ Quote from stakeholder

⁷⁰ ibid

⁷¹ ibid

A failure to inform the notifier, in the absence of the statutory exemptions, would be a breach of the Act. Of deeper concern is that such a breach would reflect what I consider a cavalier attitude to the legislation, or worse, ignorance.

Formal Resolution

The Family Group Conference (FGC) is the cornerstone of family decision making and is a formal procedure, the rules of which are dictated by the CYP&F Act under sections 20 to 38. An FGC must be carried out to the letter of the law, in line with the principles and objects of the Act and with due consideration and courtesy. The purpose is for the family to consider the information and opinions of the professionals who have been involved in the investigation and to decide by consensus whether the child is in need of care and protection. Where this is agreed, the family then discusses and attempts to agree on a plan to ensure that the child's care and protection needs are met. The co-ordinator must then obtain the agreement of the social worker or the member of the police involved (s15) or the referring agency (s19) and of others directly involved in the plan.

Plans can involve the commitment of a range of family members to the child and its parents, in order to enable the child to remain at home. Or it may involve the child moving temporarily, occasionally or in the long term to the home of an extended family member. Such a move requires, according to CYF policy, an assessment of that family member and other occupants of that household as safe and suitable, before the child makes such a move. In the light of some of the outcomes of unassessed placement, this makes very good sense.

Plans can also involve ongoing services from CYF and/or from other agencies or professionals, in order to support the child and the family to resolve the issues they are facing. It is not until resolution is secured that the case should be closed.

Where decisions and plans are agreed to within the FGC, the plan is then set in motion. Where there is no agreement, or if it is agreed that the situation needs to be put before a judge, then the matter is referred on to the Family Court with an application for a Declaration that the child is in need of care and protection.

Unfortunately, there has to date been no evaluation undertaken on the success or otherwise of the Care and Protection Family Group Conference. Criticisms are made of poorly or illegally co-ordinated FGCs and these are of concern. Mostly they appear to be the result of fiscal constraint. It is true that the FGC has the potential to become an expensive exercise, especially where extended family members must be flown in from around the country and for this reason it appears that budgetary restrictions have been placed on them. A well co-ordinated and resourced FGC does, however, have the potential to resolve issues for children and their families earlier rather than later and thus to save the department considerable costs in the future.

There have been complaints made about practices which appear to be the result of cost-cutting or pressures of work. One submission summed up the concerns of the others:

Delays in FGC processes have been witnessed to impact on clients greatly ... That the venues for FGCs are held at a convenience to CYF rather than negotiated with families, and that the FGC often occur at the office rather than a venue that may be more appropriate to the family e.g. marae. Funding constraints inhibit some family members from attending FGC when they are lacking finances to do so (particularly for those travelling from out of area). In addition tikanga (and courtesy) is not observed in the provision of food for those attending all-day meetings. At times – short notice to attend FGC's has impacted on family and professional parties ability to attend.⁷²

Other submissions allege that pressure is at times brought to bear on family members to agree to the decisions of the professionals.

Without adequate funding for programmes and plans and scrupulous co-ordination of FGCs, the family decision model cannot be seen to be being operated within the law nor can it be expected to produce the results it has the potential to produce.

Informal Resolution

The Family/Whanau Agreement is an informal procedure, developed under CYF policy only and has no authority under the Act. I am told that it can work well where, as the result of an investigation, the social worker does not consider the child to be in need of care or protection, but that there is a risk of this should the family's situation or dynamics continue without intervention. The social worker can enter into this informal agreement with the parent(s) only, or can involve other family members and other agencies, reviewing progress after 3 months⁷³

While this may indeed often be a constructive way to work, I am very concerned about:

- a) the use of precious social work resources for this, when other agencies could possibly be engaged to manage such a process and
- b) the potential to usurp the FGC and to make decisions about a child in need of care and protection that should be made more formally. While the Care and Protection FGC has not been assessed, at least it is subject to legally prescribed proceedings.
- c) the potential to undermine the checks and balances provided by the Family Group Conference. If the child and his/her counsel is absent from the informal meeting, that may be in breach of UNCROC.

Referral on

Referral to another, presumably more appropriate, agency can occur at the point of intake or as the result of an unsubstantiated investigation, or at any point

⁷² Quote from stakeholder

⁷³ NZCYPS SWis KPIs: Output Definitions and Casenote Headers

where a No Further Action decision is made. Without clear interagency procedures for this, confusion and suspicion can arise.

As part of CYF's decision to close a case and take no further action it may recommend that a family seeks help from a community group. This creates confusion as the client is often left to present themselves without clear communication from CYF to the organisation as to whether this is a necessary step to ensure the on-going safety of the child or a step that is just highly recommended. Without clear funding arrangements in place the perception of such referrals is that CYF is shifting its costs and risks onto the community rather than having the best interests of the child in mind.⁷⁴

Non-notification

Perhaps the greatest risk to a child is that no one notices or brings to notice their predicament. The debate about whether or not to legislate for the mandatory reporting of child abuse has been active since the fifties in New Zealand⁷⁵. The 1992 Mason Report clearly recommended that mandatory reporting should be included in the CYP&F Act, and lively debate ensued at all levels of the sector as a result. Cabinet eventually decided against it, largely on the information received from the Department

The debate is still alive, however, as evidenced from the stakeholder submissions.

There are strong ethical arguments for making it compulsory for everyone to report child abuse, this would give a clear message in law that child abuse is not to be tolerated.⁷⁶

Additional advantages put forward include alleviating the problem of making difficult moral decisions, having a higher standard of child protection, increasing the numbers of referrals and overcoming the lack of clarity regarding current notification procedures. In one extreme, recent case, where a child died as a result of injuries, and a doctor failed to report purportedly because of previous poor response from CYF, it is argued that this life could have been saved.

The question is not what it would be nice or good to do but what must be done as a moral and legal imperative.⁷⁷

There are, however, also many arguments against compulsory notification, not the least that the Department would not be able to cope with the possible increase at intake. One submission suggested it would be tantamount to “creating a clientele without a service”.

The bald reality is that ‘mandatory reporting’ in New Zealand (no matter how desirable in a theoretical model it may be – a debatable point) is presently

⁷⁴ Quote from stakeholder

⁷⁵ Dalley B (1998).

⁷⁶ Quote from stakeholder

⁷⁷ *ibid*

*unsupportable simply because the Service is already unable to cope with the volume of work it receives under a non-mandatory reporting process.*⁷⁸

CYF themselves are of this view:

*The Department's view on mandatory reporting has not changed since the December 1992 report to the Minister of Social Welfare by the Department of Social Welfare...(overseas experience has shown that) the introduction of mandatory reporting results in a significant increase in the rate of reporting. The number of substantiated reports does not increase proportionately however. The critical issue is not the volume of reports but the quality of child abuse reports...It needs to be assessed whether or not the increase in expenditure incurred by mandatory reporting is the best use of scarce resources available for child protection.*⁷⁹

If mandatory reporting is to be reconsidered, as well as asking how the resulting increased number of notifications will be resourced, the issues of 'who must report' and 'what should be reported' need to be addressed.

Voluntary reporting

The mandatory reporting debate of the early 1990s resulted in the decision to go instead with improved public information and the development of voluntary reporting protocols with key organisations. To this effect, the Act was amended in 1995 to include these as extra duties of the Chief Executive (s7(2)(ba)).

It was in response to this amendment that the Chief Executive (the Director-General at the time) developed the extensive publicity campaign "Breaking the Cycle" about child abuse and neglect. The position of Community Liaison Social Worker (CLSW) was created for the purpose of liaising with communities to promote the work of the Service and supporting the development of voluntary reporting protocols. Protocols with the national organisations were to be developed with National Office, while smaller local organisations were encouraged to develop their own protocols, with assistance from CLSW.

*New Zealand has developed, and is continuing to make progress on, programmes with a preventative focus, and these contribute to the voluntary reporting of child abuse and neglect.*⁸⁰

I have concerns, however, about the current commitment to and effectiveness of this strategy. I understand from information provided by CYF's National Office and some submissions, that there are now 23 national protocols, including some that are very recent. Figures for the numbers of protocols with local organisations are not kept and it appears that there has been no national evaluation of protocols or the effectiveness of the CLSW position. I am informed there are currently approximately 22 CLSW countrywide, a number of them part-time, and only two in the entire Auckland region. I understand the two NZCYPS "Breaking the

⁷⁸ Quote from stakeholder

⁷⁹ CYF submission p36 –37

⁸⁰ Quote from stakeholder

Cycle” publications on interagency protocols, designed as a guide to their development, have been out of print for some time. The only reported CLSW action is that of presentations about CYF made within the community. Support with the development and implementation of protocols is not reported on.

It seems that existing reporting protocols have not necessarily been well promoted within those organisations. For example, the protocols for the former CHEs, which involved painstaking and lengthy consultation with all disciplines and were eventually signed off by the Director-General of Health in 1996, had no official promotion and very little staff training. Perhaps as a result, key staff spoken to at one former CHE, currently a Hospital and Health Service (HHS), were this year quite unaware of the protocols and were struggling to develop their own. Protocol negotiations with the Department of Corrections, which began in 1995, have just been signed off, as have those with the Family Court.

It may be that the promotion of voluntary reporting, like mandatory reporting, is considered counter-productive to the management of existing levels of notifications.

The community liaison social worker is an essential ... but ... full time role and there needs to be more Maori in this position. However, the better the community social worker is at their job the more referrals will come into CYF and the more need there will be for adequate staffing.⁸¹

However, if voluntary reporting cannot be adequately delivered on, then mandatory reporting will become a necessity. I would like to see renewed effort and expenditure on the development and use of voluntary reporting protocols and interagency collaboration in the protection of children.

Tracking and sharing information about children at risk

I have been attracted to the idea, supported in several submissions, of a register of all children in New Zealand, indicating their whereabouts, the name of their primary caregiver and whether or not there are concerns about their welfare from a wide range of professional and community workers. There have been expressions of concern about children of transient families and children who truant and the inability of the education authorities to account for the whereabouts of all school-aged children.

Most typically, the recent report of the Commissioner of Children highlighted the number of times that little James Whakaruru was presented to doctors with injuries without alarms being raised as to the cause and frequency of them.

There are of course privacy implications for any database, including who manages it and who has access to it. The National Health Index of all New Zealanders does register all children born in or immigrating to New Zealand. It is, however, limited to health data, is used by only 80% of General Practitioners

⁸¹ *ibid.*

and there is no system built into it to indicate a child for whom there are concerns.

It also seems important, however, that there is only one system for reporting or indicating the possibility of abuse or neglect nationally. Under the CYP&F Act, that is either through the Police, who should report on to CYF at least after investigation has indicated risk, or through CYF directly. CYF does of course maintain electronic data on all children reported to them (currently on CYRAS) as well as information on their status – i.e. whether there are current concerns or ongoing interventions. It therefore seems to make sense that any register indicating a child at risk needs to be managed from that source.

The British Child Protection Register is in fact composed from care and protection data. Managed by each local authority, there is a custodian (usually an experienced social worker) who responds to enquiries from any legitimate professional who has concerns about a child, checking firstly that person's identity and credentials.⁸²

Thus, here, a school who has a truanting child could check with a specified worker at the Call Centre, that there are not care and protection concerns also. If there were current concerns, the custodian would pass on the school's information about truanting to the social worker, with a request to contact the school. If there were past concerns the school might decide to make a fresh notification to the Call Centre about the truanting. When a child leaves a school and receives no request for records from the child's new school within a certain period, then it would also seem logical to check with CYF. WINZ records are also useful for locating transient families.

Similarly, a General Practitioner (GP) or a paediatrician could check with the custodian of the register to help assess the likelihood or otherwise of an injury being accidental or non-accidental.

Identifying non-accidental injury

While there is concern about the willingness and ability of a range of professionals to report suspected abuse or neglect of children, the professional group of most concern is that of GPs who contribute only 1% of all notifications to CYF⁸³. This may be due to a lack of specialist skills in identifying non-accidental injury, or for reasons of patient confidentiality. Some have indicated that they would prefer to be mandated, as this would excuse them from breaking confidentiality with members of their client group. Another submission suggested that only GPs be mandated.

As a result of the publication of the James Whakaruru report, the Accident Compensation Corporation (ACC) referred on to CYF, 236 children under 5 who had had or were likely to have by the age of 5 more than 10 accidents in their

⁸² Department of Health (2000) London

⁸³ CYF submission: p26

lives and these are being following up by CYF. 52 were already known to the Department.⁸⁴

If ACC could be mandated to report all children suffering an agreed number of accidents (10 seems very high indeed) to CYF then omissions by GP's in the identifying and reporting of non-accidental injury could be countered at this point. Since all doctors, whether in private practice or working in hospitals and emergency clinics must report all accidents to ACC this has the potential to provide a very broad coverage indeed.

Recommendations:

- 4.1 That funding and resources be concentrated on reducing the number of cases unallocated by the time set for a response, to zero within the next six months and that provision be made to ensure that response remains at zero.**
- 4.2 That the practice of delaying the filling of vacancies as a cost-saving technique be reviewed.**
- 4.3 That the role, effectiveness and reporting lines of Care and Protection Resource panels be evaluated.**
- 4.4 That the use of family/whanau arrangements be revisited to ensure consistency with the principles of the Children, Young Persons and their Families Act and with UNCROC.**
- 4.5 That the Chief Executive's duties under s 7(2)(ba) of the CYP&F Act be adequately funded and fully exercised so that voluntary reporting protocols in all disciplines and organisations are actively promoted.**
- 4.6 That options be investigated for tracking and sharing of information about children at risk.**
- 4.7 That discussions with the Accident Compensation Corporation be instigated with the purpose of developing a protocol for reporting all children under the age of 5 with more than 3 accidents and all children between the ages of 5 and 12 with more than 5 accidents to CYF.**

⁸⁴ from Press Release material provided by ACC and CYF.

Chapter 5

Placement and the Care of Children

To be removed from family and placed in the care of another obviously is a significant event in the life of any child or young person. The minimum requirement and justification for such an intervention, when it is done by the State, must be that any such placement will be safer and less traumatic.

A highlight of the review was a meeting with ten articulate young people, some in care and some who had recently left care, who described their experiences in care. They reported feelings of confusion, indignation and being treated as second-class citizens or criminals. A good placement, in their view, was one where they were welcomed and treated like a member of the family, even when they were testing the boundaries.

The numbers of children and young people in care, estimated by the Department at 5000+, are increasing by as much as 12% each year. The average number of placements for any one child is 3.1 per year⁸⁵. This figure has tripled over twenty years and for those children who have multi-placements, is known as the 'drift in care' phenomenon. The increasing numbers of children and young persons in care is alarming. Of even greater concern is the enormous disruption to the lives of children caused by the increasing numbers of placement changes.

Informal placements are not normally followed up for extended periods of time before the case is closed. Formal placements, although recorded on casenotes and reviewed regularly in the Family Court, have not been the subject of any extensive, qualitative or longitudinal research. It is disturbing that so very little is known about the lives of these children or the outcomes for them of these placements.

Practice guidelines

Both the CYP&F Act (sections 5, 6 and 13 in particular) and the CYF guidelines provide a clear framework for care placements.

CYF guidelines for placement emphasise the importance of maintaining links between the child in care and their family, ensuring the safety of the child and ensuring the child receives appropriate care. The guidelines specify the development of a care plan that is monitored and that includes a consideration of the return home where this is appropriate.

A Family Court lawyer stated:

⁸⁵ Child, Youth and Family submission to the review, p.38

*“The flagship Act outlines principles which, on close reading, amount to no more and no less than a guide to good social work practice. There is, I suggest, nothing particularly extraordinary or, indeed, novel about these principles. They are necessarily couched in very general terms. It is a matter of some continued mystification to me that even after 10 years many social workers (and indeed their supervisors) have a very selective recall of these principles, which I would have thought, ought to be so well and comprehensively understood that there could be no real debate or discussion about their meaning or impact. Considerable mythology is attaching itself to the general principle that the well being of children, except in exceptional circumstances, lies with their families and that where intervention is required it is the family itself which is best placed to make decisions about the children. Too frequently this is translated as – **only** families can make decisions about children. The interpretation of what comprises a family (or family group – see s2 CYP&F Act) is too narrowly applied. Above all there is an unwillingness to confront the existence of “exceptional circumstances” or to recognise the paramountcy of the child’s welfare where there is a conflict or inherent irreconcilability of the principles of the Act (s6 CYP&F Act)... Amongst the least well understood provisions of the Act appear to be the “permanent placement” option found in s13(h) CYP&F Act – this provision tends to be wholly overlooked or treated as a secondary provision only (a postscript rather than part of the principal text).*

There are several factors which militate against the Service operating effectively. The apparently incessant restructuring has reached almost comic proportions. This was an issue alluded to in the report of the Ministerial Review Team in 1992 (p94) and yet change and reorganisation continues apparently unabated. The inability to retain staff at basic grade and supervisor level means that it is all too common for children who are ‘in the system’ to have several case workers over a 12 month or 24 month period. Indeed some families have complained to me that the only time they see their social worker is when a visit is made to introduce a newcomer and say farewell by the departing worker. The huge turnover of staff at this level results in a lack of continuity and consistency both for individual cases and generally. Little opportunity for knowledge to accrete exists; leadership and guidance is at a premium (those able to provide it are themselves involved in the systemic turmoil and the opportunity to construct important mutual bonds of trust and understanding is limited).⁸⁶

Interests of the child

The interests of the child are often not met satisfactorily in care. Attachment issues reported in submissions include the separation of siblings, bonding with ‘temporary’ caregivers and then being moved on often very suddenly, frequent changes of placement and the need for therapy to deal with grief issues. The cultural identity of the child may be lost where a social worker makes assumptions based on the child’s whanau or where no attention is paid to the child’s heritage at all. Often the child is not informed of the reasons for being placed in care and may be left feeling responsible or at fault. Little regard may be given to the child’s developmental stage and long delays in placement can mean a child is not safe or the child’s timeframes are ignored. Not being aware of children’s needs or viewpoints can lead to abuse in care or oversight of developmental and educational issues. Poor and/or delayed planning means that

⁸⁶ Quote from stakeholder submission

children and young people become 'lost in care' and where the case management, if it exists at all, loses direction and is simply holding the child.

"Some show a woeful ignorance of child development, or if they have some knowledge of it, don't apply it if the child's interests cut across political correctness".⁸⁷

The Department admits to a 'fuzziness' in Departmental social work practice around the importance of long-term work planning.⁸⁸

A more thorough process of assessing the developmental needs of children at the point where they enter care would facilitate decisions about health, schooling, therapeutic work and the possibility and timing of a return home.

Placement shortages

One of the biggest barriers to providing suitable placements is the current shortage of placements available. This is at a time where there are rapidly increasing numbers of children in care and, in particular of children and young people with difficult and sometimes abusive, behaviours.

The system of bednights, requiring agencies to forecast the number they will be needing annually, can mean that when they run out, typically before the end of the year, the agencies are unable to take further children.

New Zealand has no assessment centres in which to place a child initially while assessment and planning takes place. Nor is there any ongoing provision for young people once their care status (usually through a Custody Order under the CYP&F Act) lapses on their 17th birthday.

Caregiver issues

Caregiver needs tend to be overlooked in the melee. They often endure having children placed with them at very short notice with little, if any, case information and at times with no information about difficult or even dangerous behaviour. Sometimes they do not see a caseworker again until there is a crisis and sometimes the child is moved on suddenly for reasons other than the quality of care provided. Their relationship with the CYF social worker is often the key to a successful placement. However, social workers change frequently and caregivers may no longer know who their caseworker is and will be unable to reach them by phone. For whanau caregivers all of this is greatly exacerbated, especially where placement is informal and all follow-up ceases. CYF states:

⁸⁷ Quote from stakeholder submission

⁸⁸ Child, Youth and Family submission, p.43

“We are currently strengthening the support offered to caregivers and family/whanau carers, but department resources remain insufficient to adequately meet the needs of a large group of families undertaking a complex and risky task”⁸⁹

Despite policy that whanau caregivers must be thoroughly assessed before placement is made, this appears to be overlooked at times, sometimes with tragic consequences.

Finally, from the Department:

Services that support families to better protect and care for their children and young people have diminished as the proportion of funding spent on care-related services has increased. Support services have come to be seen as discretionary, whereas care is non-discretionary. Some 84% of special costs funding, which provides social services to families, is being spent on care and related services.

While taking a child into care is a significantly intrusive intervention in the life of the child there is a perception among staff that doing so is the only certain way to secure adequate resourcing.⁹⁰

Such blatant disregard for the principles and objects of the Act, and an apparent ignorance of attachment theory and possibly whanaungatanga, is indeed chilling. This is especially so in the light of evidence that children are not well served in care. I suspect that many children may be better off left at home.

Recommendations:

- 5.1 That the basis for taking children and young people into care must only be in accordance with the objects and principles of the Act, and in particular children should not be removed to care solely to secure resourcing for the services they require.**
- 5.2 That assessment processes and/or placements be implemented for the purpose of planning for a child (and working with the family) when the child first comes into care, and that:**

⁸⁹ Yates (2000)

⁹⁰ Child, Youth and Family submission to the review, p.16

- This period should take between 2 and 6 months and should see an intensive injection of resources in terms of testing (health, emotional health, educational level), family meetings and therapy, and behavioural assessment and settling;
 - The existence of the child's attachment (parents, siblings, other family members, friends and neighbours) needs to be assessed;
 - The child's needs in terms of safety, attachment, health and education need to be assessed and the child's wishes, fears and concerns need to be heard during this process;
- 5.3 That consistent processes be developed for maintaining and rebuilding family links and relationships for children and young people placed apart from their genealogical family, especially with siblings.**
- 5.4 That children and young people in care be provided with kits containing age-appropriate information about being in care and their rights, a scrap book and personal record of being in care, and a suitable bag or backpack for their belongings, inscribed with their name.**
- 5.5 That the process for review of plans be reviewed and improved, both on the part of CYF and the Family Court, and that in particular:**
- All reviews must be carried out in a timely manner;
 - All reviews must include evidence of developmental and needs assessments and progress in achieving goals;
 - The child or young person's views must be sought and carefully considered, especially over the age of seven;
 - Counsel for Child must meet and consult with the child or young person.
- 5.6 That if a child is assessed as being unlikely to be able to return home, extensive plans be made for permanent placement (guardianship), based on significant psychological attachment (s 13(h), CYP&F Act).**
- 5.7 That consideration be given to 16 year-olds in care with insufficient support being placed in the guardianship of the Chief Executive and supported constructively through their transition to adulthood at least to the age of 20.**

Placement

- 5.8 That the practice concerning the placement of children with family and whanau be reviewed, to ensure that all placements are made in the best interests of the child**
- 5.9 That all informal family placements resulting from Family Group Conference or other decisions be monitored, and data recorded on these children and families.**
- 5.10 That full caregiver assessments must be carried out and recorded for all caregivers, family/whanau or otherwise.**
- 5.11 That placement monitoring and support must be carried out regularly and reported on consistently.**
- 5.12 That all caregivers be provided with an information pack each time a child is placed in care, with this pack containing information about the child and its family (in accordance with Privacy Act considerations), entitlements and resources for the child and caregiver and guidelines for CYF's expectations and rules about caregiving practice.**
- 5.13 That consideration be given to whether quality assurance and support of caregivers may best be carried out by approved community agencies, and to the funding that these agencies may require to allow for the social work required for this and for the professional up-skilling of caregivers, including the use of bulk funding as a possible mechanism.**
- 5.14 That the issues contributing to placement shortages be researched so that solutions may be found.**
- 5.15 That disused Family Homes be re-established for either assessment or emergency placements.**
- 5.16 That consideration be given to the stakeholder recommendations in Appendix 6 to this report, including:**
- (a) Don't cap bednights.**
 - (b) Increase funding caps for difficult children.**
 - (c) Attach funding to the child.**
 - (d) Remove long-term placements from bednight funding.**

Adoptions and Guardianship

How we treat children especially those who lack adequate parental care, is a basic concern for our community. Given the major societal changes over the past half century, with the phenomenon of single parent families, blended families and joint custody, together with our heightened perception of the significance of the child's personal status, it seems appropriate to make a fundamental reappraisal of our Laws and Institutions in this sphere.

Clearly the lack of a coherent and principled approach to the placement, protection and care of New Zealand children whose birth families cannot, or will not, provide properly for them does a disservice to these children. Adoption cannot be viewed in isolation from the wider issue of the placement of children needing alternative care. Rather, it represents one end of a spectrum of available options.

Where a child is in care and unable to return to his or her birth family or parent, issues of permanent placement may be raised. Currently the provisions regarding care, custody and guardianship may be found in five different pieces of legislation: The Adoption Act 1955, the Guardianship Act 1968, the Family Proceedings Act 1980, the Child Support Act 1991, and in the Children, Young Persons and Their Families Act 1989.

It has been suggested that the United Nations Convention on the Rights of the Child (UNCROC) would provide the foundation for legislation relevant to children.

At the time of writing this report I am aware of a Law Commission Report No.65 published September 2000 entitled Adoption Alternatives – A Different Approach and a New Framework. A review of adoption is also under way, with the government Administration Select Committee considering adoption law reform and calling for submissions. The Ministries of Justice and Social Policy are leading a review of the Guardianship Act. A discussion paper has been prepared on guardianship law and may be accessed from the Ministry of Justice website or from the Ministry of Justice itself. I am aware also that Child, Youth and Family Services had a significant input into discussions with the Law Commission. Among other things the Law Commission report recommends a 'Care of Children Act'. I understand the Department favours the establishment of an Act that would provide a continuum of permanent placement options for children and time limited guardianship options for some temporary placements.

Given the magnitude of the issues, together with the valuable and detailed materials already available, I consider it would be inappropriate for me to make any recommendations.

Chapter 6:

Services for and by Maori

Some rationality may be brought to these considerations if we discipline ourselves not to think of Maori as some homogenous group linked by single unitary aspirations but rather as a large minority of our population with diverse ambitions and levels of interest and attainment, the majority of whom, as with the total population of New Zealand, love their children.

The CYP&F Act 1989, together with Puaoteata-tu, provided Maori with an opportunity, from which separate Iwi Social Services were able to be developed to help improve care and protection services for Maori. I have been asked to pay particular attention to these 'Maori' services with respect to notification, referrals and placement. In addition there was a direction to examine the rationale for the placement of Maori children in 'stranger care' outside of their whanau, hapu and iwi/kin group.

Child, Youth and Family submission

It may be helpful to approach this controversial area by citing from the submissions to this review by CYF.

"Who are the children and young people we deal with?"

Approximately 45% of the children and young people we deal with are Maori. It is unlikely that this will change quickly. We are primarily a provider of statutory remedial services that are accessed by families at risk when they have fallen through gaps in the universal services – such as education, health, housing and employment – provided by other sectors.

We have introduced systems and requirements to record the whanau, hapu and iwi affiliation of Maori children and young people. However, more needs to be done to ensure the details of whakapapa are well recorded and inform casework.

We have managed to place 45% of Maori children and young people with their whanau, hapu or iwi. This compares with 33% for all children and 22% for Pakeha children."⁹¹

In many Placement decisions one would hope that in the first instance the suitable, safe and appropriate alternative can appear within the family, whanau, or hapu group, whatever the race of the child. Such a view accorded with the Puaoteata-tu philosophy⁹² which was an immensely influential report in the tumultuous debate which preceded the final enactment of the CYP&F Act.

⁹¹ Child, Youth and Family Services, Submission to the Review

⁹² Puaoteata-tu, Report by the Ministerial Advisory Committee on a Maori Perspective for the DSW

Of one thing I am convinced, that all children residing in New Zealand, irrespective of race and country of origin, are entitled to the best service that Child, Youth and Family can provide. It may be that the services should and could be delivered in different ways in order to be most effective.

“How can we give effect to the Treaty?”

Steps by Child, Youth and Family to give effect to the Treaty sit within the wider recognition of the Treaty by Government and the responsibilities of Government under the Treaty. There is ongoing political debate about the tension between the principles of kawanatanga and tino rangatiratanga. It is the prerogative of Government to resolve this with Maori.

We are developing a Treaty framework to guide our practice and decisions on devolution. However, this work sits in the wider context of the evolving relationship of the Crown with Maori, and to some extent we are operating in a macro-policy vacuum.

Where to on devolving services to iwi and Maori?

We straddle an uncomfortable divide between the realities of Government process (including the State Sector and Public Finance Acts) and the expectations of iwi and Maori providers who wish to enter a direct relationship with the Crown.

Since the introduction of the CYP&F Act (1989) we have built expectations among iwi and Maori providers that services and funding will be devolved to them. Although we have committed considerable management energy and resources to grapple with this issue, we have made limited progress towards devolving services and funding. By and large, the expectations of Maori have not been fulfilled.

We are constrained by the State Sector and Public Finance Acts, the absence of wider Government policy, and the imperative to keep providing demand driven services. Despite our best intentions and moves towards partnering funding relationships, iwi and Maori providers remain sub-contractors to Child, Youth and Family. We need to test with Government the level of statutory provision of child protection and youth justice services to Maori it wants to devolve to iwi and Maori providers, and whether the Crown will enter into direct purchasing relationships with iwi and Maori organisations.

If devolution of statutory services to iwi and Maori is extended, then a sizeable proportion of our current resources will need to be transferred to iwi and Maori providers. Government will need to determine the ongoing level of funding required to provide a ‘safety net’ service to all citizens under article 3 of the Treaty.

Services provided by iwi and Maori have not been funded to the same level as established voluntary sector providers. Purchased services are not a cost-saving response for Government or Child, Youth and Family. Moving to equitable funding will require additional resources or a significant movement of funding away from established voluntary sector providers.

The devolution of services may cost more than existing services if the state is required to provide residual statutory services to support clients whose needs are too complex, challenging or dangerous to manage in community settings.”⁹³

⁹³ Child, Youth and Family Services submission to the Review, p.12

The proposed amendments to the Act to recognise whanau, hapu and Maori Social Services is one such development which may move the process of devolution forward. The anxiety expressed by the Department about taking responsibility for defining these structures, preferring Maori to do this themselves, was palpable.

“Government has indicated that it is committed to supporting Maori communities to develop their own policy, planning and programme delivery capacities. The CYP&F Act’s objectives, principles and duties provide a clear framework for this development.

We are implementing a range of strategies to give effect to Government’s Closing the Gaps strategy. These include:

Maximising kin-based care as the best opportunity to ensure the safety and well-being of Maori children.

Promoting by-Maori-for-Maori service strategies.

Supporting provider development for iwi and Maori providers.

Promoting opportunities for Maori influence in decision-making about outcomes for their own children and young people, and about the service responses required to enhance Maori wellbeing.”⁹⁴

It is surprising that these strategies are stated as only just being implemented when they are embedded in the principles of the 1989 Act.

The funereal progress towards the manifestation of those Maori Social Service organisations has occurred for a number of reasons. I enumerate two in particular.

The first regards what seems to have been unduly protracted contracting negotiations between potential social service providers and the Department. The common complaint is that with each ‘restructuring’ negotiations have had to be renewed. This is reflected in a grievance expressed by many caregivers, foster organisations and agencies providing social services throughout the entire non-government, contracting sector. There are issues and disputes regarding crippling compliance costs and to varying degrees incomplete and inadequate funding for the purchase of services which the state itself seems unable to provide. All that has resulted in major resentment. In June of this year the Department has suggested an action plan to address matters. This has been developed from the Commissioned Reports (Cox and Irwin) under Iwi Social Services strategy that I understand was also based on a review by Te Puni Kokiri of the Department’s contracting role. This was described by the present Chief Executive as –

“A clear indication of areas where their (Child, Youth and Family) responsiveness to Maori could be improved.”⁹⁵

There was further acknowledgement of criticisms about the Department.

- *The Department holding powers to dictate terms to Iwi.*
- *Little room for Iwi to attempt to negotiate a contract price in good faith.*

⁹⁴ Ibid. p.13

⁹⁵ Jackie Brown, Chief Executive Officer, Child, Youth and Family Services

- *The service type unit costs having been largely predetermined and set by the Department.*
- *Those unit costs being perceived to be inequitable in comparison, for example –*
 - *bednight rates paid to mainstream performers,*
 - *DOC contracting process did not represent a partnership arrangement between Iwi Social Services and the Department as it consigns an Iwi to a subcontracting role. Nor does it demonstrate a clear Departmental commitment to meet its Treaty and Statutory obligations to Maori.*

On the other hand a second major stumbling block, in my view, has been the fractionation which has occurred within Maoridom itself. This could suggest flaws in the basic proposition of a ‘unitary tribal model’. I am more inclined to the ‘human frailty’ school of thought.

It had been a matter foreseen in the 1986 Report of the Advisory Committee and in the Preface to that Report it explains that –

“While we are recommending significant change to policies and practices that Government Agencies, with particular reference to giving the Maori community more responsibility for the allocation and monitoring of resources, these will be to no avail unless that community in turn picks up the challenges and significantly strengthens its tribal network.”⁹⁶

“How do we build a culturally competent workforce?”

There is a real need to build – in both Child, Youth and Family and Maori social service providers – a strong and culturally appropriate social work workforce that can provide better services to Maori.

The majority of social workers – both in our organisation and in voluntary sector agencies – lack professional qualifications. There is a clear tension in the professionalism debate between life experience, cultural competence and professional qualifications. This is particularly pronounced within the Maori social work workforce and for Maori social service providers. The proposed legislation to register social workers will present real challenges to the partnership between Child, Youth and Family and Maori.

Social work tools such as the Risk Estimation System (RES) have gained a certain measure of credibility due to an exhaustive process of consultation and testing with Maori. These tools should be able to translate to Maori service providers. However, other social work processes, such as investigative interviewing, family group conferencing, and placement processes have not been through a process of cultural ratification. To build effective partnerships with iwi and Maori in the delivery of statutory social work services, it is vital that work to develop Maori models of statutory practice proceeds. The absence of clearly articulated Maori social work practice models will hold back the transfer of functions to Maori providers.”⁹⁷

⁹⁶ Puaoteata-Tu, Report by the Ministerial Advisory Committee on a Maori Perspective for the DSW.

⁹⁷ Child, Youth and Family Services submission to the Review, p.14

It becomes clear, on reading this part of the submission, that the Department's bicultural model, so promising in the mid-1980s, has stagnated over the 1990s. In the light of this discovery, it seems necessary to go back to the developments of the 1980s, when the longstanding grievances of Maori in terms of their children, began to be listened to.

The Maatua Whangai programme

From my observations and experience, the concept of Maatua Whangai has vast advantages. In all placement decisions one would hope that in the first instance the suitable and appropriate option can appear within the family, whanau, hapu group, whatever the race of the child.

Indeed, I suggest that much of the bickering and ideological posturing which is now taking place may have been averted had that scheme alone continued. For example, within at least the last two decades there has been increased awareness for (amongst other things) greater cultural sensitivity. Within the Social Work field one strategy adopted by Child, Youth and Family has been the concept of Roopu with Maori Social Work Teams. The rationale for this was explained as follows:

*"They (ie the Maori Social Work Team) are less likely to be confused or diverted by issues of culture."*⁹⁸

Some of the viewpoints I have heard from Maori clientele dispute that particular assertion.

Puao-te-Ata-Tu

The report of Puao-Te-Ata-Tu was in my view a far sighted one. In many ways not only an accurate analysis of contemporary failings prior to 1986 but more importantly a visionary document for collaboration with the wider community from the enticing prospects of community ownership of responsibility for the welfare of children and young persons.

*"Further there is ample evidence of interest, concern and energy in the community. We and our people hope that its strengths, diversity and ingenuity will combine with the Department in mutual goodwill to herald a new dawn: PUAO-TE-ATA-TU."*⁹⁹

That report, as was inevitable with such a distinguished chairman, was a principled and respectful document from a public and social policy point of view, and may well have gone even further in manifesting what I have no doubt, were genuine governmental intentions.

⁹⁸ Lorinda Harding, Practice Consultant, Department of Child, Youth and Family Services in an article 'Strengthening Maori Families: When they look to their past Maori Social Workers find the key to dynamic Social Work'.

⁹⁹ Puao-Te-Ata-Tu, Report of the Ministerial Advisory Committee on a Maori Perspective for the DSW

Failure to run with the constructive vision of Puao-Te-Ata-Tu is a sad indictment on all those involved. Certainly many of those views received Legislative endorsement. But the failure to grasp the opportunities contained therein has meant in my view that the overall benefits which extended far beyond the then Department of Social Welfare has been delayed, diluted and in some cases distorted. Here we have what appears to be the downside of so called devolution where there is great enthusiasm to devolve responsibility but not control.

So what might have been a watershed for a vibrant pluralist society is currently a pathetic meandering trickle polluted with the detritus of failed opportunities.

I would respectfully urge that the Puao-Te-Ata-Tu report be revisited so that some of those notions and concepts such as the Social Welfare Commission, the District Executive Committees, and the Maatua Whangai can be considered. Obviously now, this would have to be in a contemporary frame but seem as representing a community contribution and influence on decision making and delivery.

The Child, Young Persons and their Families Act 1989

It is my view that the 1989 legislation was a genuine attempt to rectify those previous processes. Indeed, many of the recommendations made by that Advisory Committee were embodied in the legislation together with the implicit acknowledgement that substantial ideological change was necessary.

There was a reaffirmation of the hapu bond supported by the strength of the tribal group and provision for Iwi Authorities to be established.

The relevant section (s396) made provision for optional cultural based services for children, young persons and their families who identify as Maori and elect to avail themselves of those services, no more no less.

In the course of this review I spent some time with two of those established Iwi Social Services; one at Hauraki and the other was Ngati Ranginui in Tauranga. Both were extremely well focussed and seemed to be providing an excellent standard of service with dedicated staff.

Ngati Ranginui in particular has a clear vision of moving from the present collaborative role with Child, Youth and Family ultimately to one of autonomy.

Both, I note, spoke highly of their Area Manager and the value of his support, encouragement and shared vision.

The point I am making may be more to do with the Department and their local Iwi organisation getting on with providing services to children as opposed to constant rewriting of strategy papers and interminable recitations of revisionist mantra.

In the ensuing 10 years and the issues which are now being promulgated we disregard the fact that notwithstanding the current public perceptions to the contrary and labels such as the ‘grievance industry’ the history of Maori protest since the signing of the Treaty of Waitangi has, on an international scale, been one of remarkable restraint. Even though the most cursory glance at New Zealand’s history will reveal a dignified parade of respectful petitions to the Queen, requests for Commissions and passive resistance. Similarly, elected Maori Parliamentary Representatives have, by and large, expressed the aspirations for the Treaty consistently throughout the last century devoid of the stridency of contemporary time.

By failing to address those reasonable and rational voices we invoked the Law of Physics which states ‘the greater the resistance, the higher the temperature’.

My concern is that as the temperature rises new sites for conflict arise and as has been most effectively observed by your colleague the Hon Margaret Wilson:

“Oppositional notions of cultural difference will create new sites for conflict that will be expressed in terms of culture ... as such they can make promotion of advancement of cultural rights more difficult! The politicisation of culture which affects the debate of cultural rights.”¹⁰⁰

Any emphasis on dogma can have the likely effect of distracting the focus from the concept of the paramountcy of the child. Of further concern is that I am convinced the greatest problem confronting children is adults, which is difficult when children are to a large degree totally dependant upon them. Ideological arguments are adult arguments. Whatever the outcome of that debate children must be seen as the beneficiaries and not the guinea pigs!

The classic irony is that anyone who has worked in the children and young persons sector would be aware of the large number of Maori men and women who have over the years, given selfless and usually unpaid service to children and their causes. The great strength that those people have made to the advancement of this country is the incredible network that they can call upon and their profound knowledge of the Maori community, all of which qualities will be required in the inevitable development of this sector involving a greater involvement by and with the community. Certainly in my own experience in both West Auckland and Auckland Central Courts I saw those strengths exhibited almost on a daily basis.

The question may be *“How to ensure the politicisation of culture as a positive and not a negative development?”¹⁰¹*

I am taken with the views of Professor Mason Durie most recently expressed in an article “Citizenship, Indigeneity, and the Treaty of Waitangi: Challenges for the State” where he said:

¹⁰⁰ Hon Margaret Wilson, Chapter 2 ‘Culture Rights: Definitions in Contexts’.

¹⁰¹ Hon Margaret Wilson

“To categorically reject the relevance of the Treaty to any particular aspects of the Crown’s work is to miss the whole point of the Treaty which was about forward planning and mutual benefits across the whole gambit of developmental interests – economic environmental, cultural and social.”

He goes on later in that quote to say this:

“At the heart of the Treaty is the promise of a mutually beneficial relationship between Maori and the Crown, a partnership.”

“The fact that the relationship has not always been positive, or that it continues to dwell too much on the past and not enough on the future, should not distract from the potential to create an understanding where indigeneity can be valued alongside those other principles so dear to the democratic heart.”

Recommendation:

- 6.1 That we may be able to have a more rational discourse on this difficult topic if we can –**
- (a) Stop the maladroit posturing and talking in stereotypical generalisations, and**
 - (b) Agree to “judge people on their character rather than the colour of their skin.”¹⁰²**

¹⁰² King, Dr Martin Luther

Chapter 7

Interagency work

A Host of Concerns

There is no doubt that a great deal of good work is done by CYF staff in their various roles. There have been positive comments and commendations scattered through the submissions. Their successes, however, seem to be in spite of the multiple problems inherent to their organisation and the overwhelming demands on their time and abilities. Without empirical evidence it is impossible to know how often their work results in positive outcomes for children. CYF state that “more than 99% of our assessments and case management provide good results for families”¹⁰³ but it is difficult to understand how they have arrived at this figure without any process of client feedback or outcomes research. This high level of success is not reflected in other submissions.

My concerns, some of which are outlined elsewhere and many of which are also acknowledged by CYF in their submission, include:

1. The unacceptable numbers of unallocated cases, which appear to be beyond the power of current staff and resources to resolve. The costs to children and families in terms of ongoing danger and stress are of huge concern. Other agencies attempting to support children and families in the meantime become very frustrated by the delays and by the lack of information about action being taken or not taken.

“This makes planning and co-ordination difficult and potentially results in poor care for the young person. Sometimes we hear that our cases have never been allocated. ... We have become increasingly concerned that they will re-present with ongoing physical and emotional health problems later in life”¹⁰⁴.

2. That social workers are making decisions without adequate supervision, sufficient consultation with other professionals and/or cultural advisors and without involving family. CYF state that “Collectively, social workers make more than 15,000 placement decisions in any single year”¹⁰⁵. They highlight:

“the difficult professional judgements that social workers are required to make every day in assessing risk and in making safe decisions that are in keeping with good practice and the principles of the Act”¹⁰⁶

¹⁰³ CYF 2000: 10

¹⁰⁴ Quote from stakeholder

¹⁰⁵ *ibid* p8

¹⁰⁶ *ibid* p10

I note with some unease, for example, that Doctors for Sexual Abuse Care (DSAC) report an inexplicable drop off in referrals to them of child victims of alleged sexual abuse for medical examination.

3. That much of the essential work in supporting families to keep their children or have them returned to them becomes secondary to more statutory and pressing tasks. The fear of public reprimand also contributes to this where:

Social workers take a conservative approach ... This can result in less family involvement and more children being placed in out-of-family care¹⁰⁷

4. That care work is considered to be of secondary importance to the sharper-edged investigative work. CYF state:

Because we are primarily focussed on acute interventions we have given less priority to accommodating the needs of the group in care. ... Workers with a high proportion of care cases in their workload are expected to carry higher caseloads than social workers undertaking more investigative cases. This limits their capacity to complete their work satisfactorily¹⁰⁸

Careful planning, the building of trusting relationships with children and young people, attention to their wide range of needs and support of placements and caregivers all impacting on eventual outcomes, appear to suffer as a result.

5. There have been many comments about issues around access to therapy and other services. This can be a result of the delay in allocating and attending to notifications.

If there is no social worker (allocated) then no support services can be applied for¹⁰⁹.

It can also be because cases are closed too early.

Some people have sexual health or mental health issues, which need treatment, but CYF still close the case¹¹⁰.

Other issues are around therapy for children and young people in care, the timing and the amount of therapy available, the shortage of services available, the need for family therapy and for therapy regarding loss of attachment and the poor accessing by CYF of sexual abuse therapy.

All these practice-related concerns suggest that CYF need inter-alia a more co-ordinated relationship with other agencies in the community, many of whom

¹⁰⁷ . CYF submission p11

¹⁰⁸ ibid p44

¹⁰⁹ Quote from stakeholder

¹¹⁰ ibid

appear to be willing to support them in carrying out at least the non-statutory aspects of work under the CYP&F Act 1989. The combined and varied skills within communities need to be enlisted in a well co-ordinated and consultative manner, if CYF is to succeed in reducing its unallocated cases and delivering a safe and satisfactory service to children, young people and their families.

It is not clear how the current move to strengthen the central base of power, National Office, by closing the twelve Area Offices and replacing Area Managers with six new national Managers located in Wellington will lend itself to devolvement to the community.

Interagency work in the 1980s and 1990s

There were strong movements in the 1980s for a more decentralised and co-operative interaction between DSW and community organisations. DSW was seen at the time as “centralised, bureaucratised and unresponsive to local and minority needs”¹¹¹. Progress towards the devolution of power to the community was made through the latter part of the decade and was legislated for in the instituting of the Social Welfare Commission (SWC) and the District Executive Councils (DECs) as part of the recommendations in Puao-te-Ata-Tu. “The Commission was to provide an overview of policy ... and to promote co-ordination and co-operation among those active in providing welfare services”¹¹². A DEC “affected the relationship between the Department and the community in which it was located and created a climate of accountability for service standards”¹¹³.

A further coup for the Non-Government Organisations (NGOs) and minority groups was the contracting provisions under Part VIII of the CYP&F Act, allowing for the setting up of community-based social services including those specifically for and by Maori and other cultures.

In 1991, however, both the SWC and the DECs were disestablished. The ensuing development of the silo mentality as the result of public sector reform has done much to break down the interface that once existed between Government agencies.

Agencies narrowed their focus as the zeal for efficiency saw ‘duplication’ as undesirable, not understanding the rich interweaving of systems which naturally occur in child and family services and which must occur to provide adequate child protection¹¹⁴

In this drive, CYF has tended to become the proverbial ‘ambulance at the bottom of the cliff’ of more universal services such as health (including mental health), education (including special education), housing and income support. Especially

¹¹¹ Baretta Herman, A. 1994: p11

¹¹² Cody, J. 1990: p24

¹¹³ ibid p25

¹¹⁴ Caton, A 2000 p28

when a child is ‘under welfare’, either as the subject of an open investigation or in formal care, some of these services have been known to abdicate responsibility.

Amongst NGOs also, the scramble for short-term and incomplete funding seems to have created competition and nervousness that work against interaction and co-operation. Services for and by Maori have suffered in particular, despite the promise of Puao-te-Ata-Tu. This environment has the potential to augment the risk to children and their families.

Some submissions suggest that there is an expectation that “services will ‘naturally’ interface even although the current funding model explicitly works against this”.

*As a matter of survival Agencies tend to look out for themselves leaving the sector confused and inefficient.*¹¹⁵

The dangers of isolation and the lack of a coherent cross-sectoral approach have been demonstrated, nowhere more graphically than in the tragic case of James Whakaruru.

Sharing the load

Who is responsible for the care and protection of children? The answer may be that we all are. We are responsible for our own children and for those of family members. We are responsible for those we teach, coach and encounter in our various walks of life. We are responsible for the child in the street and we are responsible for the children we may never see, but whose education, health and welfare we contribute to through taxes and donations.

Other government agencies must still carry out their statutory responsibilities at their own cost. For example, education (including special education) and health (including mental health) services still have key roles to play in the lives of children and their families and are in a position to avert the need for care and protection intervention or to support and contribute to that process.

The 1980s model of inter-agency responsibility for child protection, ably described by Anne Caton in the latest Social Work Now journal, reads like a description of services in another country, foreign as they are to us now.

*In the early 1980s Child Protection Teams were established all over New Zealand. Spearheaded by prominent medical and legal child protection leaders, and supported by the interdepartmental committee, the National Advisory Committee on the prevention of Child Abuse, and by the head offices of all departments involved, three pilots were established to formally manage child protection across agencies.... By 1987 there were 33 teams nationwide.*¹¹⁶

¹¹⁵ Quote from stakeholder

¹¹⁶ Caton 2000 p29

This model was overridden by the Family Decision Making model which does, however, invite other agencies to contribute information and assessment to the family at the FGC. Caton, while promoting the advantages of interagency discussion and interaction and advocating for professional-only case conferences prior to the FGC, also acknowledges the dangers inherent in this model.

I have been fascinated by the writings of the British social worker, Tony Morrison. In his 1996 paper¹¹⁷, he considers in some detail the nature of effective partnerships both between clients and agencies, and between agencies in the child protection field. He emphasises the need for clear definitions of ‘partnership’ as well as the need for partnerships to be underpinned by a continuum of supportive and protective services. He proposes, in his most constructive manner, a framework for interagency collaboration.

Morrison isolates and identifies the complexities of current child protection work in an overloaded child protection system. He describes “collaboration in a fragmenting environment”¹¹⁸ with a rather pointed analogy:

One cannot feel safe as an airline passenger while witnessing the crew arguing among themselves, or worse, providing conflicting accounts of what is happening and what to do when the plane is in trouble¹¹⁹

Agency collaboration, while considered desirable is also very complex, “due to a combination of structural, philosophical, cultural, and financial blocks”¹²⁰. Furthermore, there are issues that arise from what is termed the “anxious environment” of child protection. “Anxiety runs like a vein throughout the child protection process”. As well as being very present for the child and for the family, “it is present, too, within the professional system, as child abuse represents a crisis not only for the family, but also for the professional network”. It is also an “organizational phenomenon, ... compounded in many organizations by the struggle for their own survival”¹²¹. Morrison quotes Menzies on the efforts by professionals and their agencies to combat anxiety:

A social defense system develops over time as a result of collusive interaction and agreement between members of the organisation in order to avoid the experience of anxiety, guilt, doubt, and uncertainty which are felt to be too deep and dangerous for confrontation¹²²

He suggests that partnership must be learnt and the same skills used in working with families as those used in collaboration between agencies. It must first be modelled by the participating agency itself, from an atmosphere of trust.

¹¹⁷ Morrison T 1996 with that author’s kind permission a full copy of this paper is included in the addenda

¹¹⁸ *ibid* p129

¹¹⁹ *ibid.*

¹²⁰ *ibid* p130

¹²¹ *ibid* p131

¹²² Menzies, I. 1970 in Morrison 1996: p131

.... It must be ingrained and modelled within the organizational structures, cultures and working relationships which seek to reward collaboration rather than competition. ... It involves a commitment to the learning organization, in which renewal rather than maintenance or survival is the driving force.

In this culture anxiety is seen as normative, allowing for expression of healthy uncertainty and difference, where 'mistakes' are opportunities for learning, not punishment. Risks are taken and innovations are attempted. The real dilemmas in child protection work are openly acknowledged and struggled with, from which unexpected or creative resolution may come; in consequence of which staff are empowered to tackle further demands.. To put it more crudely, this is an agency culture in which thinking and feeling, and not just 'doing' are legitimized"¹²³

Considering the crisis concerning their ability to cope with the quantity of incoming notifications, its own isolated and defensive culture and that occurring between agencies, I am not entirely confident that CYF has the current capacity to initiate successful interagency processes, especially in the delicate area of investigation.

This may mean that CYF need to focus their work on their statutory responsibilities. These could include:

- The exercise of powers and authority which may have an adverse effect on an individual's rights. This refers in particular to the receiving and investigating of notifications, the execution of warrants and Court Orders and making applications to Court
- Ensuring the prescribed care and protection processes, such as FGCs, are effectively carried out within prescribed time frames and the objects and principles of the Act
- If other services are provided by other agencies, CYF should monitor these services to ensure that they are in fact carried out in accordance with the CYP&F Act.

All other tasks could feasibly be contracted out to other agencies, allowing CYF the time it needs to carry out those which are best and most appropriately carried out by a government agency. I consider that they need to develop a better analysis of the range of tasks required to truly support a child and its family through a crisis and into constructive restorative work, thus limiting the steadily rising increase in the numbers of children coming into (and possibly remaining in) care.

Services that support families to better protect and care for their children and young people in the home have diminished as the proportion of funding spent on

¹²³ Morrison 1996: pp135-6

care-related services has increased. Support services have come to be seen as discretionary, whereas care is non-discretionary. Some 84% of special costs funding, which provides social services to families, is being spent on care and related services¹²⁴

Consequently, they would need to develop a plan, after a full process of consultation, for sharing this work with other agencies. Currently it is that work which is clearly being overlooked, or done ineffectively because of fiscal and time constraints.

Freed up from these non-statutory but very key components of the care and protection process, they would be able to tackle and reduce the quantity of incoming work, become proficient in one area of the process (investigation) and develop a model for working co-operatively and safely with other agencies.

One very perceptive submission to the review expressed this view clearly:

For some years in the sector ... there has been discussion around CYF focussing on its core activity of abuse investigation and contracting out to community services which are required as a consequence of their investigations. ... Govt and CYF attitudes have tended to be ambivalent as regards devolution of services. The consequence is that community agencies go from financial year to financial year uncertain of their future and contract funding.

The Care and Protection Sector does not have an agreed vision, nor an agreed strategy as to how the vision can be made a reality. ... We need a clearly defined blueprint for the future, and one which the Government will commit itself to fully resource.¹²⁵

The current Strengthening Families programme is one interagency initiative operating with varied response and success around the country. Not designed as a crisis intervention mechanism, it nevertheless can involve CYF social workers, although the fact that it is not counted as an output is apparently a discouragement from participation by some. There is also no specific funding for it, seen as it is as a mechanism for already funded agencies to improve the quality of their interaction.

Another significant initiative is the current interagency proposal to set up multi-disciplinary and multi-cultural “centres of excellence” in Auckland and South Auckland, focussing on developing a co-operative approach to the investigation and follow-up of child abuse and neglect notifications. These “demonstration projects”, involving the close proximity of a range of agency staff, may be an opportunity for the development of healthy partnerships, both between agencies and with families and local communities.¹²⁶

¹²⁴ CYF submission p16

¹²⁵ Quote from stakeholder

¹²⁶ Davies et al

The interagency committee convened after the Whakaruru Report also has the potential to initiate a more interactive culture.

Conclusion

In his article “Working Together to Safeguard Children”, Morrison (p22) states:

One of the greatest challenges for professionally-orientated child protection systems is how to engage in meaningful dialogue with local communities, often in neighbourhoods suffering acute deprivation whose accumulated experiences of welfare and other institutional systems may often have been very negative. If a more holistic approach to child protection is to be achieved, it will require the ability of agencies to work collaboratively at this developmental level, to have the confidence to relinquish some of their power and to learn how to identify, work with and strengthen the informal caring networks that in any event carry out the bulk of social and child care work within communities.”¹²⁷

It is my submission to you that that exactly parallels the New Zealand environment in that regard.

The notions of providing an holistic approach of working on an interagency and partnership model with communities seems to be the way forward. However, the current state of health of the Service it would be my recommendation that the Service itself needs strengthening, upskilling and refocusing before contemplating such a difficult programme.”¹²⁸

The failure to carry out the rich promise afforded by Puao-Te-Ata-Tu in particular is a stark example of our failure to work with the community even when there were statutory imperatives.

I feel strongly that, given Morrison’s well researched evidence, CYF need to effect considerable change to their internal culture and management style and to regain the confidence of the public before they are truly able to embark on interactive practice.

Recommendations:

- 7.1 That you consider the setting up of a Child Welfare Commission, composed of community and Departmental members, to provide a similar function as that of the Social Welfare Commission and to have input into policy development.**
- 7.2 That you also consider the setting up of Community Councils, attached to each CYF site and performing similar purposes to those of the former District Executive Committees.**

¹²⁷ Morrison 2000: p22

¹²⁸ *ibid.*

- 7.3 That, with this firm commitment to community consultation and partnership, you work towards developing a blueprint for a care and protection sector, which will support CYF in providing a superior service totally focussed on meeting the care and protection needs of children.**
- 7.4 That in developing this blueprint, consideration be given to the devolution to the community of non-statutory work (restorative work, formal and informal care work, Family Group Conference follow-up) to allow CYF to focus on the effective execution of its statutory duties.**

Chapter 8

Child and Adolescent Mental Health

This whole area should be one of grave concern. The prevalence and incidence of children and young people with severe mental health needs and/or behavioural problems is, I suspect, much larger than imagined. One chilling statistic mentioned to me suggested that this group might number between 20,000 to 40,000 children and young persons across the Health, Education and Social Services.

Mental health and children and young persons in Child, Youth and Family care

A significant proportion of children and young people in care have special needs due to disability and/or serious mental health problems. A number of these children, currently in community based care, would historically have been placed in psychopaedic and institutional care with trained health professionals providing care. Service gaps exist at the interface of CYF and the Ministry of Health regarding the question of ‘who pays’ the care and service costs?

*“An example of our closing the service gap has been the development of therapeutic programme for conduct-disordered youth in Auckland. This programme was funded at \$2.9M (GST inclusive) during F2000/2001 for 29 young people”.*¹²⁹

*“As the proportion of our funding spent on the provision of care services has escalated, it is this group of children and young people that place the heaviest fiscal burden on sites once care and protection issues are established. In addition, the principles (s5 and s13) embedded in the CYP&F Act are not applied to the family group conferences offered to children, young people and their families who are the subject of s145 referrals and subsequent s141 Extended Care Agreements. The practical result of this can be the alienation of children and young people with high support needs from the support and society of their natural families. This presents us with a significant practice dilemma which remains unresolved 10 years after the legislation’s implementation”.*¹³⁰

Mental health disorders in childhood and adolescence

Children and young people involved with CYF experience high rates of health problems including mental health problems and self harm, multiple mental health problems, high rates of behavioural problems, developmental delay, academic underachievement, social and behavioural problems in relation to their care and management.

¹²⁹ CYF (2000) Submission to the review, B17

¹³⁰ *ibid*, B18

Mental health disorders may be categorised into those diagnosed during childhood such as: autistic disorder, Asperger's disorder, attention deficit/hyperactivity disorder (ADHD), conduct disorder and attachment disorder, and into those that are similar to adult conditions such as: depression, anxiety disorders, schizophrenia and bipolar disorder. In addition to psychiatric problems, many drug and alcohol problems begin during adolescence. Further complicating diagnosis and assessment for severity, is the fact that many children and young people have multiple mental health problems existing at the same time¹³¹.

The CYF mental health database (January 2000) identified 395 diagnoses of mental health conditions including: conduct disorder (110), alcohol and drug (63), depression (72), ADHD (57), Psychosis (24), Pervasive developmental disorder (13), Sexual acting out (13), Attachment disorder (13), anxiety (10), developmental delay (5), eating disorders (3), enuresis (1), miscellaneous (11).

Prevalence of mental health disorders amongst children in care

The benchmark, set for services, for children and young people with severe mental health problems is 3%. Because multiple risk factors may increase the rate, it is estimated that 12% of children and young people in CYF (approximately 1000 in care and 2500 associated with CYF but not actually in care) will have severe mental health problems. The department identified only 29 young people to participate in the therapeutic programme recently funded by the government.

A further 35 – 57% are estimated to have clinically significant emotional and behavioural problems (approximately 3000 – 5000). In addition to the diagnosed mental health conditions for CYF children and young people, it is estimated, that at least 1040 young people in care will attempt suicide.¹³² Furthermore, almost half of those who complete suicide in this age group [14 – 16] in the general population will have had contact with CYF.

Issues for Child, Youth and Family

Families often cannot manage a child with severe mental health and/or behaviour problems. CYF is often seen as the 'agency of last resort' and the child is presented as being in need of care and protection. The child may be more of a danger to other children than to him or herself.

Children with mental health problems are difficult to care for. Specialised caregiver services are expensive. The weekly care cost for CYF may be as high as \$2000. Added to this is the problem that care may need to be long term with no possibility of returning a child home.

¹³¹ Ministry of Health, 1998 New Futures, 11

¹³² Jones, Linzi, Mental Health Services for Children and Young People Involved With CYF, p.14

Gaps in services occur due to the lack of co-ordination of the various agencies that might be involved with a child. A child may not be able to access resources in one agency because their criteria have not been reached. CYF is the agency 'dumped on' because of its statutory responsibility to children. Other agencies view the Department as the purse available to fund, for example, educational, health counselling and other needs for the child. The Department, in turn, is critical of Health transferring care placement obligations back onto families without providing adequate support services.

Because of the poor access to mental health services, front-line CYF staff and residential staff are having to manage increasingly critical and complex cases.

If mental health issues are not dealt with early enough they lead to more serious and expensive interventions later in a person's life. It is probably false economy to save money when a mental health problem such as drug and alcohol abuse is vastly more easy to deal with when the abuser is still a child or young person. Services available in this area are however very sparse and drug and alcohol clinics target adult clients primarily because of budget restrictions.

"Already our national statistics and international place of leadership in numbers of teenage suicides is a disgraceful indictment on our whole society."¹³³

As long as we as a nation continue to file these problems in the 'too hard basket' we must acknowledge that we are bequeathing to future generations an ever increasing social, moral and financial debt.

Recommendations:

- 8.1 That at the political level it would be highly desirable to fashion an all-party accord on services for child and adolescent mental health.**
- 8.2 That the Strengthening Families model be used more extensively in providing services for child and adolescent mental health.**
- 8.3 That CYF workers receive training enabling them to make earlier assessments of mental health problems.**
- 8.4 That the Ministry of Health be the lead agency in the provision of services for child and adolescent mental health.**
- 8.5 That preventative and early intervention programmes be introduced.**
- 8.6 That the Department needs to be aware of the range of services available for child and adolescent mental health, and how to access these.**

¹³³ Brown, M Keynote opening Address to Beyond Dependency Conference, 5

Chapter 9

Conclusion

Notwithstanding all of the foregoing criticism and commentaries it is patently obvious that the genesis of most of the problems have been due to external factors beyond the Department's control.

Child, Youth and Family is justifiably annoyed and entitled to be indignant at what is unfairly dumped on their doorway. Ultimately the corrosive effects of that endless derision and unfair criticism will be damaging and demoralising as indeed has happened.

For those reasons I have attempted to set out the almost impossible and, in some cases, contradictory demands which fall on the Department, as well as setting out the political, social and legislative context within which the Department must operate. However, some factors are clearly largely within Child, Youth and Family's control. These would primarily include the culture which has developed within the organisation and in its relationships with the sector and the quality of the social work practised.

I believe certain remedial actions have to be addressed immediately. These include a bold strategy to restore a sense of credibility within the whole organisation. The so-called professionalisation of the staff is important but will only comprise one part of the necessary 'therapy'. They must include bridging the psychological chasm between management and frontline staff, with much better communication between these groups encouraging two-way dialogue, robust debate and creating a climate of cohesion.

I have met a large number of very fine dedicated employees of this Department who have so much more to contribute. Within the Child, Youth and Family there is a huge creative potential which should be tapped. This means those barriers to participation have to be identified and demolished.

The ultimate goal is the restoration of the department's credibility with wider society. That will not begin to occur until Child, Youth and Family repairs its own self-image.

Another area of crisis is in the area of diminishing resources of caregivers. Here I believe it may be required to commence a national campaign to attempt to recreate that resource.

Obviously too, a fresh initiative will require to take into consideration all the matters raised by stakeholders.

The urgency is compounded by the huge 'risks' presented by inadequate and inappropriate placement facilities.

One area which could be tapped is the considerable reservoir of goodwill, knowledge and skill which undoubtedly remains in the wider community, including the 'third sector'. Child, Youth and Family need to develop a culture of more open dialogue and better use of resources for the benefit of the children and families they serve.

Perhaps the most fundamental requirement along with dramatic attitudinal change would have to be inspired leadership throughout the sector.

Chapter 10

Epilogue

For several decades we have in this country been assailed with images from overseas, particularly North American cities, with urban ghettos, graffiti covered walls, of rampant crime, a phenomena of drive-by shootings, drug addiction, child prostitution and the insidious demoralisation of children where each successive generation of poverty compounds the difficulty of egress from the ghetto. Until relatively recently, we have as a nation been as spectators in a boxing match where one might wince at the blow but be insulated from the pain and effect. Bolstered too, by the confidence that, with a benign welfare state, full employment, free access to health and education, state housing etc, those overseas excesses could not occur here.

Then the wheels fell off.

Now we too have areas where walls are covered with graffiti, the emergence of ethnic gangs, police expressing concerns to Parliament about international drug networks. We have a rise of young people committing violent crime and we should be concerned when schools are serving trespass notices on older youths and ex pupils who are suspected of selling or delivering drugs to pupils.

We are not simply talking about delinquency, but rather the much larger picture of breaking a destructive economic cycle. In 1997 I was involved in a programme in a number of South Auckland primary schools. There we are working with beautiful bright eyed and bushy tailed youngsters and then I was reminded of those 14,15 and 16 year olds whom I had seen in Youth Courts in that same area, some of whom had not attended school since they were 10 or 11 years old. Who presented as sullen, aggressive and frustrated; unable to participate in the conspicuous consumption, which one writer has perceptively described as having been elevated to the greater social good. Frequently also their primary loyalty is to a gang and family intervention is treated with contempt.

My criticism is not towards welfareism, neo-liberalism, globalisation, managerialism, but rather directed to the emergence of a perpetual cycle of poverty where we are in danger of robbing children of ambitions and dreams of employment. Destroying their self esteem and denying them the prospects and dignity of earning a living and the social mobility which was a characteristic of our society.

I would hope that our current concerns about the welfare and safety of children would stimulate the whole community to consider such issues as –

- (1) What is the role and responsibility of the State in this whole area of 'Child Welfare'?
- (2) What is the competency and efficiency of the State in this area?

- (3) What are the alternatives?
- (4) What are the responsibilities of families to their children?
- (5) What are the responsibilities of the community to all children in this country?

When looking at our society the demographics are that there are approximately 940,000 in the 0-16 age group which is 26% of our population. 250,000 of them are in benefit dependent homes. 22% of children under 15 live in solo parent homes, a figure which has doubled between 1981 and 1991. 56% of children in sole parent families are in the lowest family income quintile.

Now, if we have any legitimate claim to being a civilised nation this ambition would have to include a fundamental commitment to the protection of our young.

The relationship between children and adults is naturally characterised by an imbalance of power. The theory is that the equilibrium is restored by the benevolent employment of that power by adults which manifests itself in protection of the young, the provision of security, maintaining and supporting the family unit, nurturing, housing, education, health care, discipline, and training ourselves to be better parents. In that last mentioned regard, all of us need to improve our role as parents. We need to examine the characteristics of nurturing, which might include the whole question of affection for children, consistency of discipline and self confidence.

If we are to transform into action the rhetoric and lip service we pay from time to convenient time to the family and to the community we might examine those characteristics of our own attitudes.

We have had cultural change in our society where the central value seems to have become individual fulfilment. Parental authority has been weakened with a resulting decline in informal social control. All of us in our community have some part to play and the justification of what is necessary is not simply an altruistic one otherwise society itself will pay. Whether it be by way of simply increased insurance premiums, if we're lucky, ranging through to the personal tragedies for the hapless victims of crimes in their families. Some people may nurse the forlorn hope that by their own industry and initiative they can insulate their lives and those of their families from this grim future. I am not persuaded that this is the case. If we are looking to turn some of these cycles, parent training courses should be stimulated, and we can all do that. Why not draw on the success and experience of so many of our older generation who have brought up families successfully? Why should parenting have to be a skill which is re-learned every generation instead of calling on the existing wisdom? We know that parental control over teenagers in our society, where adolescents

have more autonomy than ever before, is increasingly difficult. We know that adequate supervision is a highly important aspect. If we had this knowledge and failed to do anything with it then perhaps we deserve the society that we have.

We know too, that the shape of families has changed greatly. With the increasing incidence of single parent families, blended families, joint custody etc, all of these factors are confusing both to parents and children. But one reassuring point stands out from the mountain of research on these phenomena and that is that internal family dynamics are considerably more important than family structure and affecting delinquency.

For example, there is overwhelming evidence of the strong impact of family controlled variables on delinquency. I stress family controlled variables as opposed to state controlled invariables such as effective parenting, monitoring the child's behaviour, recognising deviant behaviour where it occurs, and stating clear rules that are consistently enforced by negotiating disagreements so that conflicts and crisis do not escalate. Family relationships, such as control and emotional attachments are the key words where the impact of family on delinquency is concerned. The challenges to all parents today relate to their ability to sustain long lasting monitoring in correcting their children's behaviour and instilling in them an internalised ethical code all in the face of the much greater mobility of children.

May I suggest one further model that of a 'communitarian' concept?

With the use of families and wider families and the strength in interdependencies there must be attachments which evoke personal obligation to others within a community of concern. They should not be perceived as isolated exchange relationships of convenience but as matters of profound group obligation but a coming together to attempt to strengthen families and communities and organisations to exert informal social control and nullify the excesses and inflexibility of crude state intervention.

All my life experience to date convinces me that there are great strengths within our community. For ten years I was based as the Judge in the West Auckland area and there I witnessed the diverse strengths and incredible generosity of numerous people of different races in all walks of life, involved in all aspects of community activity. We need only reflect on so many aspects of New Zealand life which are dependent on voluntary labour. I suspect that about 98% of sports coaching in this country is done by unpaid enthusiasts.

There has been similar involvement in the cultural, charitable, artistic, religious and political facets of our society. Given this immense reservoir of concern and sense of group obligation I am positive we can draw on that distinctly New Zealand tradition.

An added bonus in my view is that we would have much less need to purchase services and the other monstrous jargon which prevails today. Such a concept is anathema and counter productive to the whole communitarian instinct. To 'strengthen' families to look after their own children in order to avoid perpetuating the welfare capture cycle, of continual dependency is ultimately to no one's benefit. Rather, it is essential for Government agencies, particularly schools, but certainly the large departments, to engage in a pro-active role in their communities. I would love to see schools and their communities coalescing to a much greater degree, partly with a view to establish a sense of pride of ownership in our education system.

We need to educate the public at large as to what are the desirable objectives and the respective roles all participants can play. One of the jargon phrases which are now thrown about whenever we talk of transferring this control is, "*the empowerment of the families/community*". I found that empowering exercise to be both stimulating and frustrating in about equal proportions. By definition the exercise is one involving a transfer of power requiring those who previously held that power to let it go. My own observation has been that while there may be some enthusiasm to hand over responsibility this is not accompanied by any great desire to hand over control. That I suggest is a matter requiring a high level of integrity and commitment by those who previously held the power, otherwise it simply becomes empty rhetoric.

My experience in the Youth Court in particular, when attempting this empowerment procedure, was that there was a high degree of co-operation and credibility required between the major players; in that case families, the Police, Social Welfare, and Justice. Relationships in the past were characterised by demarcation attitudes and that can be a discouraging factor. But on a more positive note where empowering takes place, where organisations do co-operate, and where a philosophy is shared, the results at times were outstanding. Dramatic change in this whole field of child care and nurturing will occur only with major attitudinal and societal transformations. But in the meantime the grosser effects of abuse and neglect can be modified by sensible innovation.

We need to encourage communities to accept ownership of these problems. In our anxiety and fear of rising crime rates and increased violence we are grasping for simple quick one sentence solutions, whereas the path towards resolution of these community concerns requires complex dramatic attitudinal changes and in some areas complete reversals of attitudes. I believe there is an immediate need to invoke strategies by communities and civic leaders co-ordinating programmes to make towns and cities safer, to enable our young to realise their dreams.

Failure to invest in the health and moral welfare of our generation will inevitably create a tragic legacy for future generations.

Already our national statistics and international place of leadership in numbers of teenage suicides is a disgraceful indictment on our whole society.

When we speak of a healthy society, I assume that means not only physical or economic health, but also moral, and dare I add, spiritual well being.

In the appalling area of domestic violence we are creating negative role models for our future citizens while the violence being perpetrated on children must be unacceptable. In figures supplied to me by the Ministry of Social Policy, family violence is estimated to effect one in seven families or over 480,000 New Zealanders. The economic cost has been estimated at \$1.2 billion dollars per year, which is more than our export receipts from wool. Each week 2,500 Womens' Refuge beds are occupied throughout the country. The only answer I can propose to that dilemma is the notion of the social equilibrium that I mentioned earlier in this review, reinforced by the concept of profound group obligation which is fundamental to the communitarian instinct.

One of our failings in this country, is whenever we are confronted with unpalatable facts our response tends to be fairly predictable. For example, immediate and violent retribution, or else increasing other peoples taxes, or lowering other peoples income levels, or the most common reaction, insisting the Government pays without any of the foregoing inconveniences.

Whereas I would advocate with respect that we, as hugely fortunate inhabitants of this beautiful country, realise and have confidence in our own strengths. Whether as individuals or in our various collective entities; whanau, iwi, service clubs, footy clubs.

It is times such as this when many in our society, with the massive social and economic contortions that have taken place, may feel they are already in a state of siege and that this is an inappropriate time to advocate pro-activity. But I suggest to you that there will never be a good time, or perhaps a better time.

We desperately need in this country to provide the inspiration and leadership to aspire to be a decent society.

But in the end our future as a nation will not, cannot and should not, depend upon the future beneficence of the Social Welfare Departmental Structure, but rather on the resolve and character of each one of us as a citizen.

Recommendations

Opening

- 1.1 That the Department of Child, Youth and Family Services acknowledge that it is under extreme pressure in many areas and that change is needed as a matter of urgency.
- 1.2 That the operationalisation of the Children, Young Persons and their Families Act 1989 be reviewed.

Management, Accountability and Outcomes

- 2.1 That an organisation like the ERO be established to monitor performance.
- 2.2 That sophisticated and less time consuming contracting procedures be developed.
- 2.3 That an internal audit be conducted of caregiving costs as compared to the Departments equivalent costs including overheads.
- 2.4 That a system of demand-driven instead of capped funding be introduced for CYF client costs.
- 2.5 That there should be one service group covering both DOC and NDOC to achieve greater integration between contracting and direct service delivery.
- 2.6 That the Department be developed to implement a professional service, an executive management team with social work experience, business awareness, knowledge of institutional history and appropriate philosophy.
- 2.7 That the Department enter into an honest alliance with the media in which the Department's activities are well publicised.
- 2.8 That frank discussion and a culture of openness be promoted.
- 2.9 That adequate funding be provided to revamp the service, recognising that:
 - (a) The Department needs adequate resources to provide the quality personnel required.
 - (b) The Government should give a clear, unequivocal commitment for such funding.

- 2.10 That in order to implement new technological systems and training, site offices could be closed on a staggered basis to carry out intensive training.
- 2.11 That special costs be externally reviewed and audited immediately.

The Quality of Social Work in Child, Youth and Family

- 3.1 That all social work staff and managers be required to complete the full introductory training programme by the end of 2001 with the complete support of management; that exceptions to this can be made where prior learning can be proven; and that staff receive a certificate on completion which entitles them to participate in further advanced training programmes.
- 3.2 That all new social workers and managers complete the full introductory training within their first year of employment, with the complete support of management.
- 3.3 That completion of the introductory training programme is a requirement of that person's Performance Appraisal.
- 3.4 That within three months the Department provide the Minister of Social Services and Employment with a new plan of how they are to develop a fully skilled social work staff, including consideration of reintroducing residential training and individual staff training plans.
- 3.5 That the introduction of social worker registration be given urgency.
- 3.6 That the work being done on the registration of social workers with ANZASW is endorsed and fully supported by Child Youth and Family management.
- 3.7 That by mid 2002 social workers should not be able to exercise statutory powers except when co-working with registered social workers and/or members of the Police.
- 3.8 That the Department set an agreed percentage of registered staff as a goal which must be realised by mid-2002.
- 3.9 That senior social workers supervise, coach and support no more than four fulltime social workers.
- 3.10 That National Office staff spend time on placement at sites in order to gain a better understanding of front-line reality.

Referral and Notification

- 4.1 That funding and resources be concentrated on reducing the number of cases unallocated by the time set for a response, to zero within the next six months and that provision be made to ensure that response remains at zero.
- 4.2 That the practice of delaying the filling of vacancies as a cost-saving technique be reviewed.
- 4.3 That the role, effectiveness and reporting lines of Care and Protection Resource panels be evaluated.
- 4.4 That the use of family/whanau arrangements be revisited to ensure consistency with the principles of the Children, Young Persons and their Families Act and with UNCROC.
- 4.5 That the Chief Executive's duties under s 7(2)(ba) of the CYP&F Act be adequately funded and fully exercised so that voluntary reporting protocols in all disciplines and organisations are actively promoted.
- 4.6 That options be investigated for tracking and sharing of information about children at risk.
- 4.7 That discussions with the Accident Compensation Corporation be instigated with the purpose of developing a protocol for reporting all children under the age of 5 with more than 3 accidents and all children between the ages of 5 and 12 with more than 5 accidents to CYF.

Placement and the Care of Children

Child centred practice

- 5.1 That the basis for taking children and young people into care must only be in accordance with the objects and principles of the Act, and in particular children should not be removed to care solely to secure resourcing for the services they require.
- 5.2 That assessment processes and/or placements be implemented for the purpose of planning for a child (and working with the family) when the child first comes into care, and that:
 - This period should take between 2 and 6 months and should see an intensive injection of resources in terms of testing (health, emotional health, educational level), family meetings and therapy, and behavioural assessment and settling;
 - The existence of the child's attachment (parents, siblings, other family members, friends and neighbours) needs to be assessed;

- The child's needs in terms of safety, attachment, health and education need to be assessed and the child's wishes, fears and concerns need to be heard during this process;
- 5.3 That consistent processes be developed for maintaining and rebuilding family links and relationships for children and young people placed apart from their genealogical family, especially with siblings.
- 5.4 That children and young people in care be provided with kits containing age-appropriate information about being in care and their rights, a scrap book and personal record of being in care, and a suitable bag or backpack for their belongings, inscribed with their name.
- 5.5 That the process for review of plans be reviewed and improved, both on the part of CYF and the Family Court, and that in particular:
- All reviews must be carried out in a timely manner;
 - All reviews must include evidence of developmental and needs assessments and progress in achieving goals;
 - The child or young person's views must be sought and carefully considered, especially over the age of seven;
 - Counsel for Child must meet and consult with the child or young person.
- 5.6 That if a child is assessed as being unlikely to be able to return home, extensive plans be made for permanent placement (guardianship), based on significant psychological attachment (s 13(h), CYP&F Act).
- 5.7 That consideration be given to 16 year-olds in care with insufficient support being placed in the guardianship of the Chief Executive and supported constructively through their transition to adulthood at least to the age of 20.

Placement

- 5.8 That the practice concerning the placement of children with family and whanau be reviewed, to ensure that all placements are made in the best interests of the child
- 5.9 That all informal family placements resulting from Family Group Conference or other decisions be monitored, and data recorded on these children and families.
- 5.10 That full caregiver assessments must be carried out and recorded for all caregivers, family/whanau or otherwise.
- 5.11 That placement monitoring and support must be carried out regularly and report on consistently.
- 5.12 That all caregivers be provided with an information pack each time a child is placed in care, with this pack containing information about the child and its family (in accordance with Privacy Act considerations), entitlements and resources for the child and caregiver and guidelines for CYF's expectations and rules about caregiving practice.
- 5.13 That consideration be given to whether quality assurance and support of caregivers may best be carried out by approved community agencies, and to the funding that these agencies may require to allow for the social work required for this and for the professional up-skilling of caregivers, including the use of bulk funding as a possible mechanism.
- 5.14 That the issues contributing to placement shortages be researched so that solutions may be found.
- 5.15 That disused Family Homes be re-established for either assessment or emergency placements.
- 5.16 That consideration be given to the stakeholder recommendations in Appendix 6 to this report, including:
 - (a) Don't cap bednights.
 - (b) Increase funding caps for difficult children.
 - (c) Attach funding to the child.
 - (d) Remove long-term placements from bednight funding.

Services for and by Maori

- 6.1 That we may be able to have a more rational discourse on this difficult topic if we can –
- (a) Stop the maladroit posturing and talking in stereotypical generalisations, and
 - (b) Agree to “judge people on their character rather than the colour of their skin.”¹³⁴

Interagency work

- 7.1 That you consider the setting up of a Child Welfare Commission, composed of community and Departmental members, to provide a similar function as that of the Social Welfare Commission and to have input into policy development.
- 7.2 That you also consider the setting up of Community Councils, attached to each CYF site and performing similar purposes to those of the former District Executive Committees.
- 7.3 That, with this firm commitment to community consultation and partnership, you work towards developing a blueprint for a care and protection sector, which will support CYF in providing a superior service totally focussed on meeting the care and protection needs of children.
- 7.4 That in developing this blueprint, consideration be given to the devolution to the community of non-statutory work (restorative work, formal and informal care work, Family Group Conference follow-up) to allow CYF to focus on the effective execution of its statutory duties.

Child and Adolescent Mental Health

- 8.1 That at the political level it would be highly desirable to fashion an all-party accord on services for child and adolescent mental health.
- 8.2 That the Strengthening Families model be used more extensively in providing services for child and adolescent mental health.
- 8.3 That CYF workers receive training enabling them to make earlier assessments of mental health problems.
- 8.4 That the Ministry of Health be the lead agency in the provision of services for child and adolescent mental health.

¹³⁴ King, Dr Martin Luther

- 8.5 That preventative and early intervention programmes be introduced.
- 8.6 That the Department needs to be aware of the range of services available for child and adolescent mental health, and how to access these.

Glossary of Terms

ACC	Accident Compensation Corporation
ACORD	Auckland Committee on Racism Discrimination
ANZASW	Aotearoa New Zealand Association of social Workers
CARES	Computerised Recording Application for Risk Estimation System
CEO	Chief Executive Officer
CFA	Community Funding Agency
CHE	Community Health Enterprise
CISM	Critical Incident Stress Management
CLSW	Community Liaison Social Workers
CPRP	Care and Protection Resource Panel
CSS	Cultural Social Services
CYF	Department of Child, Youth and Family Services
CYP&F Act	Children, Young Persons and their Families Act 1989
CYPFA	Children, Young Persons and their Families Agency *
CYPFS	Department of Children, Young Persons and their Families Service *
CYRAS	Care and Protection, Youth Justice, Residences and Adoption System
DECs	District Executive Councils *
DOC	Departmental Output Classes
DPA	Domestic Protection Act *
DQA	Data Quality Audit
DSAC	Doctors for Sexual Abuse Care
DVA	Domestic Violence Act
ERO	Education Review Office
FGCs	Family Group Conference
FTE	Full Time Employment
HFA	Health Funding Authority
HHS	Hospital and Health Service
ISS	Iwi Social Services
KPIs	Key Performance Indicator
MRES	Manitoba Risk Estimation System
MSS	Maori Social Services **
NDOC	Non-Departmental Output Classes
NGO	Non-Governmental Organisation

NHI	National Health Index
NZCFA	New Zealand Community Funding Agency *
NZCYPSS	New Zealand Child, Young Persons and Their Families Service
OCC	Office of the Commissioner for Children
PFA	Public Finance Act
PPU	Permanent Placement Unit (Grey Lynn Child, Youth and Family)
PQA	Professional Quality Assurance
PSA	Public Service Association
PFA	Public Funding Agency
QPA	Quality Performance Analyst
RES	Risk Estimation System
SAT	Serious Abuse Team
SSA	State Services Act
SSC	State Services Commission
SSD	Social Security Department *
SWC	Social Welfare Commission *
SWis	Social Work Information System * 'The Department' Department of Child, Youth and Family Services
UB	Unemployment Benefit
UCB	Unsupported Child Benefit
UNCROC	United Nations Convention on the Rights of the Child
WINZ	Work & Income New Zealand

* No longer current

** Forthcoming

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Submissions Received for the Review

Name of individual, group or organisation forwarding a written submission

5th Dimension Resources Trust
ACROSS
ADDvocate
Adolescent Mental Health
Aotearoa NZ Association of Social Workers
Auckland Metro Child & Family Support Services Project Group
Balu, Rosemary
Barlow, Gordon
Barnardos
Bazley, Dame Margaret
Brant, Brigit
Bryan, C & J
Christchurch Family & Foster Care Association Inc
Christchurch Methodist Mission
Christian Child & Family Support Services
Clarke, Ray
Clarkson, Hugh
Clayburn House Therapy Centre
Conway, Dael
Cooper, Maria
Corkill, Dr Caroline
Davies, Dr Emma
Dell, Judy
Department of Child, Youth & Family Service
de Rooy, Ona
Doctors for Sexual Abuse Care
Doolan, Michael
Epston, David
Fancourt, Dr Robin
Foxell, Iain
Graveson, Inspector Chris (in his personal capacity)
Gubb, Brian
Hamilton North School
Harding, Heather
Hassall, Dr Ian
Herbert, Averil
Hobson, Sharon
Irving, Jenny
Jefferson, Simon
Kelly, Dr Patrick
Kirk, Shelley
Lawrence, Megan
Leach, Felicity
Muir, Paul
National Collective of Independent Women's Refuges
Newman, Hon Dr Muriel
NZ Council for Christian Social Services
NZ Family & Foster Care Federation
NZ Kindergartens Inc.

O'Dempsey, Michael
Open Home Foundation
PANIC
Parenting Second Time Around
Parentline Inc
Project K Trust
Public Service Association
Reid, C A
Robertson, Diane
Royal New Zealand Plunket Society (Inc.)
Smith, Professor Anne
Specialist Services Tauranga
T D Partners
The Institute for Child Protection
Timeout Carers
Todd-Lambie, Anne
Van Hooker, J K V
Vuletich, Maria
Wanganui Family Counselling Services
Worrall, Jill

Oral Submissions Recorded for the Review

Adams, Tui
Area Managers for Child, Youth and Family
Auckland Focus Group
Auckland-based Focus Group
Barriball, Kathryn
Belgrave, John
Bone, Jane
Call Centre
CATS
Christian Child and Family Support Services
Clayburn House Therapy Centre
Comber, Geoff
Commissioner for Children, Roger McClay
Community Liaison Social Workers
Conway, Dael
Davies, Dr Emma
Department of Child, Youth and Family Services – Grey Lynn Call Centre
Department of Child, Youth and Family Services - Hamilton
Department of Child, Youth and Family Services – Nelson
Department of Child, Youth and Family Services – Rotorua
Department of Child, Youth and Family Services – Royal Oak
Department of Child, Youth and Family Services – Wellington
de Rooy, Ona
Everard, Carole
Fagaioa, Taima
Gillies, Andy
Guild, Tom
Hamilton North School

Hauraki Iwi Social Services
Henare, Heather
Kauri Trust Youth Services Inc
Larsen, Win
Massey University MSW (Applied) Students
Max, Lesley
Mellor, John
Morris, Judith & Levy, Diane
Ngati Ranginui Iwi Society
NZ Law Society
O'Dempsey, Michael
Palmerston North Community Workers
Peppertree Trust
Public Service Association
Saftinet
Sheppard, Ngaire
Soyso, Dr Nelum
Spiers, Juliet
St John, Susan
Taeaomanino Trust
Taylor, Roger
Te Pua Pohutukawa
Te Puni Kokiri
Thom, Alison
Tu Wahine Trust
Victim Advisers, Auckland District Court
Vietnamese Children & Family Association
Ward, Trish
Watkinson, Frances
Watson, Dr Peter
Werry, Professor John
West Auckland Family Services
Winiata, Te Pua
Young People in Care Association
YouthLaw (Inc)

Others who made contributions

Ball, Wendy
Bush & Forbes
Calvert, Sarah
Central Presbyterian Support Services
Duncan, Grant
Edwards, Bill
Graveson, Inspector Chris
Her Hon Judge DF Green
Her Hon Judge Jan Doogue
His Hon Judge D J Carruthers
His Hon Judge KG Maccormick
His Hon Judge M D Robinson
His Hon Judge P Boshier
His Hon Judge Pat Mahony
Morrison, Tony

NZ Law Society
Orsborne, Elizabeth
Perkin, Melissa
Priestly QC, Dr John
Privacy Commissioner
Project Hope
Rogers, R (and others)
Ross, Michael
Sarich, Andrew
Shortland, Waihoroi
Stirling, Erica
Treasury Office
Walker, Harry (and others)
Wood, Richard – Strengthening Families
Wooding, Tony