

“Preventing Problems Before They Arise”

ISSUES FOR LEGISLATIVE ASSEMBLY INQUIRY

OUTLINE OF ORAL SUBMISSIONS AND EVIDENCE

PAUL MASON, FAMILY LAWYER, FORMER COMMISSIONER FOR CHILDREN,

1. 3 THEMES:

1. Crisis Driven: not “preventing problems before they arise”
2. Closing files culture vs Model Parent
3. External and independent oversight

“Coercive” powers (entry, inspection, requirement to produce)

Meetings alone with children and young people (CAYP)

2. PROJECTS UNDERWAY – traps for young players

YJ Court Pilot – NOT Child Protection – Chief Mag Hill

DoJ FV Act review – children are not victims of family violence

DOJ Children’s Court Rules Project – current Act, Mag Mollard et al

DOJ Therapeutic Courts Project – Victor Stojcewski, DOJ

DHHS CYPATF Act review

Complaints in Care policy revision – remove 1:1 meetings; dilute priority of CIC.

DSA Review – bypass independent advocacy

WWCC - any protection without 3-part child-safe accreditation?

Human Rights Bill consultation – unresolved conflict between family/child rights

3. OUTSTANDING RECOMMENDATIONS: others

Jacob/Fanning Report (2006)

Fanning, Who Is Listening To The Children Now (2006)

Hinton, Forgotten Families (2008)

Prins Report (2008)

"Child Protection internal review" (May 2010)

4. OUTSTANDING RECOMMENDATIONS: PMason

Charter of Rights for CAYP in OOHC:

Right 4: Regular meetings alone with my worker"

DoJ FV Act review– s.7 "family violence"

s.50 Criminal Code, UN CROC and TLRI (2003)

DHHS CYPATF Act review: Statutory Intervention

Primary dispute resolution

Family Law Act jurisdiction

Care Agreements and Orders

Less Adversarial procedures

Procedural matters (documentation,

OOHC

Ch Visitors with amendments like s.79(1)(fa)

DCYFS deny policy = not understand policy

Complaints in Care policy

Steering Group recommendations not in DSAct

DHHS Disability Services Act review Steering Cttee: advocates

"Who Will Take Responsibility? Children in Disability Respite" (2009)

"Parens Patriae Partnered Parenting. Formal Disability Care" (2010)

"She Will Do Anything: Circumstances of 12yo and Family" (2010)

Human Rights Bill: rights of children independently of rights of family

Commercial sexual services: how quarantine <18s?

5. CFC FUNCTIONS AND POWERS

Tasmanian Hansard 1997

Independence

Term of office, co-location, funding channel, selection by Parliament

Coercive Powers

Vic Ombudsman's Own Motion Investigation

Vic Law Reform Commission Chapter 11.

Paris Principles (Independent Status of National Human Rights Institutions)

Possible Roles:

Investigate = complaints

Oversight = monitor measures, random audit

Advocacy for individual children

Annual report to Parliament on UN CROC compliance

6. GATEWAYS (Community Based intake Services)

Positives and huge potential

Negative: Potential as a Govt spin machine, not affect children

Step 1 reduce "unallocated list" 2008 file closure

Step 2 reduce notifications.

Mr O'Halloran 14.10.10 "The responsible thing to do is review those systems and plug any gaps."

Gaps and Cracks (criteria of risk, data matching, follow-up, referral, drought of respite service for ch living with disabilities, voice of ch and advocacy, Ch Prot reunification policy).

7. ARGUMENT FOR A COMMISSION OF INQUIRY

The decision to prosecute only one of "The 200 Men" and the public interest": DPEM role; DPP role; Attorney-General role

Public Interest: "presumption of innocence" before charge; requirements of proof; capacity of victim; specific and general deterrence; retribution; WWCVP risk; acculturation of peri-pubescent sex & Profs Wortley and Smallbone; pre-publication of evidence 1/10/10; political risk.

DOCUMENTS RECOMMENDED FOR THE COMMITTEE CONSIDER:

PUBLIC AND DISCOVERABLE DOCUMENTS (* = supplied by P Mason)

1. Hansard 1997, Parliamentarians references to the position of the CfC (1997) *
2. "Physical Punishment of Children" Final Report No.4, Tasmanian Law Reform institute (October 2003)
2. CfC Report: "Who Is Listening to the Children Now" (WILTTCN) (2006)
3. Jacob/Fanning (2006) & WILTTCN (2006) recommendations *
4. Hinton T., "Forgotten Families", Anglicare (2008)
5. Recommendations from "Prins Report", DHHS (October 2008)
6. Recommendations from "Child Protection Internal Review", DHHS (May 2010)
7. "Own Motion Investigation into DHS Child Protection" (May 2010), Victorian Ombudsman
8. "Protection Applications in the Children's Court" Victorian Law Reform Institute (Sept 2010)
9. "She Will Do Anything to Keep the Girls" abridged de-identified version (55 pages) (July 2010)
10. Ditto, Table of Notifications Nov 2005 to Sept 2009 (after "Notifier" has been de-identified: s.19 CYPATF Act), page 25, "She Will Do Anything to Keep the Girls" unabridged identified version (61 pages),
11. Summary of CfC Recommendations re Child Protection (2008-2010) *
12. Ch Rights in a Human Rights Bill, notes by P Mason *

DOCUMENTS IN CAMERA

1. "She Will Do Anything to Keep the Girls" unabridged identified version, 61 pages (2010).
2. Detailed chronology of 12yo and immediate family drawn from DHHS, DoE, DPEM and Supreme Court records.