



AUCKLAND DISTRICT LAW SOCIETY

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Public Issues Committee

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Public Issues Committee

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PRECIS
ADDRESSING THE SAFETY OF CHILDREN AT RISK

Yet another death of a small child coincides with the release of international statistics demonstrating New Zealand's rate of child abuse is unacceptably high. That is acknowledged by our Prime Minister.

It is time for a concerted and comprehensive examination of safety issues and the lack of effectiveness of our current measures.

Article 3 (1) of the United Nations Convention on the Rights of the Child requires the best interest of the child to be a primary consideration. That has not been observed.

The debate as to the appropriateness of physical discipline should not be allowed to mask other serious issues.

The Department of Child Youth and Family Services is required to provide for the protection of children and young persons from harm, ill treatment, abuse, neglect and deprivation under the Children Young Persons and their Families Act 1989. The Department is manifestly having difficulties in discharging its obligations. The United Nations Committee on the rights of the Child in its consideration of reports submitted by New Zealand under Article 44 of the Convention (released 3rd October 2003) commented that **it "remains concerned that the Department of Child Youth and Family Services does not have adequate financial and human resources to effectively carry out its responsibilities"**.

Serious issues as to truancy also remain unaddressed and issues arise as to the implementation of Article 28 of the United Nations Convention on the Rights of the Child which requires that primary education is compulsory and available.

The Public Issues Committee of the Auckland District Law Society suggests:

1. **Serious and immediate consideration be given to implementing the recommendations of the United Nations Committee on the Rights of the Child as to:**
 - (a) **Full implementation of Article 4 of the Convention by prioritising budgetary allocations to ensure implementation of the economic, social and cultural rights of children.**
 - (b) **The gathering of disaggregated data on budget allocations for children and the systematic assessment of the impact of economic policy initiatives on children.**
2. **A report be commissioned from an outside and independent agency as to the extent to which the recommendations of the Brown Report of December 2000 have been implemented by the Department of Child Youth and Family Services, such report to be made publicly available.**
3. **The legislature consider empowering the Family Court to have the final responsibility for approval of placement where custody is granted to the Chief Executive of the Department of Child Youth and Family Services and the jurisdiction to require such conditions as will minimise the risk to a child of an inappropriate placement.**

- 4. The recommendations of The Education and Science Committee of the House of Representatives of 1995 for a national data base to collect enrolment, attendance, exemption, suspension, expulsion and truancy data now be implemented with a precise time frame for its creation and that all appropriate steps now be taken to ensure national uniformity in requiring attendance and implementation of enforcement systems.**
- 5. Adequate tracking systems be put in place to ensure children moving from one school, either by way of relocation or by moving onto intermediate school or secondary school, are enrolled at a further school.**
- 6. There now be a comprehensive effort to examine the effectiveness of the ways in which we presently deal with the safety issues of the children at risk and to take such measures as will genuinely address the evident failures of the measures currently in place.**

ADDRESSING THE SAFETY OF CHILDREN AT RISK

The announcement of the death of yet another small child by apparent non accidental injury coincides with the release of international statistics demonstrating New Zealand's rate of child abuse as unacceptably high. The Prime Minister is reported as commenting in response to the release of those statistics "it's not a reputation we want for our country. We have a high level of child abuse and neglect and we have to address it" (New Zealand Herald, Saturday 27th September 2003).

The Public Issues Committee of the Auckland District Law Society endorses that comment. We suggest it is now appropriate that there be a concerted and comprehensive effort to examine the ways in which we are addressing the safety issues of the children at risk, the effectiveness of the measures currently in place and the reasons for the evident failures of the process. It would be most unfortunate if the wider issues became submerged by the debate as to physical discipline, which we suggest is only one aspect of the problem.

We note that Article 3(1) of the United Nations Convention on the Rights of the Child, to which New Zealand is a signatory, provides "in all actions concerning children, whether 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."

The legislature has provided for that paramountcy in Section 23 of the Guardianship Act 1968 and Section 6 of the Children Young Persons and their Families Act 1989. The Department presently responsible for the administration of that latter Act is the Department of Child Youth and Family Services.

As a consequence of considerable public concern in the late 1990s as to the functioning of that Department, particularly in the light of several horrific deaths of young children known to the Department, the Minister of Social Services commissioned a report from Michael Brown, a former Youth Court Judge. The report was released in December 2000. It recorded that "the Department had received legal advice that when 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". That advice would appear to be in clear conflict with New Zealand's obligations under the United Nations Convention.

The duty of the Chief Executive of Department of Child Youth and Family Services, imposed by Section 7 of the Children Young Persons and their Families Act, is to take such positive and prompt action and steps as will in the Chief Executive's opinion best ensure... that the objects of the Act are attained in a manner consistent with the principles set out in Sections 5 and 6 of the Act. Section 4(d) provides as an object of the act: 'assisting children and young persons in order to prevent them from suffering harm, ill treatment, abuse, neglect and deprivation' and 4(e) 'providing for the protection of children and young persons from harm, ill treatment, abuse, neglect, and deprivation'.

In April 2003 National newspapers were reporting figures released showing the Department of Child Youth and Family took 621 days to investigate a case identified as urgent and that between January and July 2002, 46 critical cases requiring immediate protection the same day were allocated to a Social Worker but not activated within that time frame. It is noteworthy that Judge Brown in his December 2000 report had commented “response times decided at intake need to be strictly adhered to if care and protection services are to have any credibility”. (page 61).

Judge Brown had also noted the conflict between the concept of financial performance goals and traditional Social Work practice. He noted that Managers were eligible for performance bonuses if they succeeded in under spending their budgets, a practice consistent with the ethos of fiscal restraint. He noted (page 15) that the 1999 Annual report of the Department of Social Welfare indicated operating surpluses under all of the output classes which represent social work and adoption services for children, young persons and their families, including those contracted out to non-governmental organisations. In that year, 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.

It is further noteworthy that the NZ Herald reports treasury figures released on Thursday, 25th September 2003, identifying education, health and welfare spending as lower than forecast by \$136 million, \$85 million and \$47 million respectively. While Government budget allocation for children and youth is included in general spending, so it is not necessarily possible to track the allocation of funding to delivery of services to children and youth, it is difficult to reconcile such a surplus with the self evident difficulties of the Chief Executive to discharge her responsibilities under the Act.

Article 4 of the United Nations Convention on the Rights of the Child provides that state parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the Convention. The United Nations Committee on the Rights of the Child in its report released 3rd October 2003, recommends that New Zealand ‘pay particular attention to the full implementation of article 4 of the Convention by prioritising budgetary allocations to ensure implementation of the economic, social and cultural rights of children, in particular those belonging to economically disadvantaged groups “to the maximum extent of ... available resources”’. The Committee noted its concern that despite the persistence of poverty, New Zealand has not undertaken a comprehensive study of the impact of its economic reform policies on children and its concern about the lack of available data on budgetary allocations for children.

We note that despite the difficulties of functioning of the Department of Child Youth and Family Services and its apparent requirement to prioritise the Public Finance Act over its obligations under the Children Young Persons and their Families Act, the Family Court has no power to impose terms or conditions upon an order relating to custody to the Department made under that latter Act. In the decision of the High Court in *The Chief*

Executive and the Family Court 2000 [NZFLR] p. 865, the Judge held that had Parliament intended that the Court could direct placement, then the power granted to the custodian would have been expressed as subject to any Court Order to the contrary. That decision effectively reduces the supervisory jurisdiction of the Family Court and creates vulnerability for a child the subject to an ill considered decision from a Department not functioning or funded to the standard anticipated by the legislation.

It may well be appropriate for the legislature to consider whether having regard to the manifest difficulties of the Department, it is appropriate to require the Court to have final responsibility for approval of placement and the jurisdiction to require such conditions as will minimise the risk to the child of an inappropriate placement. The Department would then be answerable to the Court, which must prioritise the best interests of the child, in the same manner as any parent under the Guardianship Act 1968.

It may also now be appropriate that there be a close examination from an outside and independent agency reporting to that Minister who is with the authority of the Prime Minister responsible for the administration of the Act, in terms of Section 2 and 7 of the Children Young Persons and their Families Act, as to the extent to which the recommendations of Judge Brown of December 2000 have been implemented. The question must be asked whether the Department presently responsible for administration of the Act is able to discharge the commitments as to Care and Protection undertaken in the ratification of the United Nations Convention on the Rights of the Child or indeed of the obligations imposed on it by the Children Young Persons and their Families Act 1989. Judge Brown commented "failure to invest in the health and moral welfare of our generation will inevitably create a tragic legacy for future generations" (page 103). This Committee respectfully agrees.

The United Nations Committee on the Rights of the Child also commented in the report just released that it "remains concerned that the Department of Child Youth and Family Services does not have adequate financial and human resources to effectively carry out its responsibilities".

The Public Issues Committee also suggests it is appropriate for a reconsideration of the extent to which New Zealand is addressing its commitment to Article 28 of the United Nations Convention and the right of our children to education. We repeat our concern, voiced in May 2001, that unless serious attention is now given to combat the problems of truancy, many thousands of children stand to be deprived of essential rights guaranteed to them.

The literature indicates that as truancy increases in severity, there are parallel increases in juvenile offending, substance abuse behaviours and mental health problems with teenagers who showed severe and recurrent truancy having much greater risk of these outcomes than those who did not truant. (c/f Ferguson, D M Lynskey, M T & Horwood, L J (1995) Truancy in adolescence. New Zealand Journal of Educational studies.)

We note that The United Nations Committee on the Rights of the Child recommends that our country "ensure that all children...have access to free primary education; enforce legislation on compulsory education and prohibit exclusions on arbitrary grounds such as pregnancy, and ensure that students of the age of compulsory education that have been legitimately excluded from a school, are enrolled elsewhere."

Recent serious cases of criminal offending by children with a history of truancy, give practical demonstration of theory.

Issues arise not only as to those children who willingly absent themselves from school but also as to those children who are kept at home by their caregivers to perform family duties. The true scale of the problem cannot be identified without adequate records. The Education and Science Committee of the New Zealand House of Representatives as long ago as 1995 recommended the establishment of a national data base to collect enrolment, attendance, exemption, suspension, expulsion and truancy data to be managed in a confidential way by one appropriate government agency with information provided by all agencies and accessible to each agency for appropriate functions only. We note that data base has still not been established and while we understand it may be under consideration, we are not aware of any time frame given for its implementation.

We suggest that a genuinely serious and concerted attempt to reduce the significant concerns highlighted by the United Nations figures released, and to comply with the obligations accepted under the Charter may be assisted by a clear time frame for the establishment of such a data base.

SUMMARY

1. Serious and immediate consideration should be given to implementing the recommendations of the United Nations Committee on the Rights of the Child as to:
 - (a) Full implementation of Article 4 of the Convention by prioritising budgetary allocations to ensure implementation of the economic, social and cultural rights of children.
 - (b) The gathering of disaggregated data on budget allocations for children and the systematic assessment of the impact of economic policy initiatives on children.
2. A report should be commissioned from an outside and independent agency as to the extent to which the recommendations of the Brown Report of December 2000 have been implemented by the Department of Child Youth and Family Services, such report to be made publicly available.
3. The legislature should consider empowering the Family Court to have the final responsibility for approval of placement where custody is granted to the Chief

Executive of the Department of Child Youth and Family Services, and the jurisdiction to require such conditions as will minimise the risk to a child of an inappropriate placement.

4. The recommendations of The Education and Science Committee of the House of Representatives of 1995 for a national data base to collect enrolment, attendance, exemption, suspension, expulsion and truancy data should now be implemented with a precise time frame for its creation and all appropriate steps should now be taken to ensure national uniformity in requiring attendance and implementation of enforcement systems.
5. Adequate tracking systems should be put in place to ensure children moving from one school, either by way of relocation or by moving onto intermediate school or secondary school, are enrolled at a further school.
6. There should now be a comprehensive effort to examine the effectiveness of the ways in which we presently deal with the safety issues of the children at risk and to take such measures as will genuinely address the evident failures of the measures currently in place.