

WRITTEN SUBMISSION TO THE JOINT  
INQUIRY INTO CHILDREN AND THE  
LEGAL PROCESS TO THE HUMAN RIGHTS  
AND EQUAL OPPORTUNITY  
COMMISSION AND THE AUSTRALIAN  
LAW REFORM COMMISSION

*Response to Draft Recommendations Paper*

By The Federation of Community Legal Centres (Vic) Inc  
July 1997

## INTRODUCTION

The Draft Recommendations Paper of The Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission "A matter of priority - Children and the legal process" deals with a broad range of issues affecting children and young people and their experiences with the legal system. This submission will deal with selected chapters of this paper which we wished to make further comment on. We refer you to our extensive submission of June 1996 in response to the Issues Paper.

The Federation of Community Legal Centres (Vic) represents 41 Community Legal Centres across Victoria. These include both specialist and local generalist centres of which many are open at night as well as day. Community Legal Centres employ lawyers, financial counsellors and community workers and have close links to other community organisations. Centres are often situated in main shopping strips, near public transport and other local community services, sometimes co-located with other non government organisations. The physical appearance of centres also extends accessibility by providing a warm and informal environment unlike many other sections of the legal system which can be daunting and foreboding, particularly for young people.

Within the Federation workers in Community Legal Centres come together to form a number of working groups around certain areas of law reform. The Children and Youth Working Group is one of these groups and aims to promote access to justice for children and young people by actively monitoring policy and legislation and participating in campaigns and submissions in relation to young people and the law.

There is no doubt that the legal system fails children at many levels and that there is consistent failure to consult with and listen to the views of children. Too often children are viewed as the offenders, rather than the victims of our legal system. Children are a marginalised and often powerless group within our society and in need of specialist (well resourced) services which recognise their particular needs. There is also an absence of complaints mechanisms particularly those which are accessible to children and young people. Further, if children's interests are ignored or overlooked, then there must be real and adequate mechanisms by which they can seek redress. This formed the theme of our previous submission with our constant and major recommendation being that An Independent Commissioner For Children be established.

## LEGAL PROCESSES IN EDUCATION

The Federation of Community Legal Centres generally commends the Draft Recommendations of the Commissions in this section, however a number of suggestions are made.

Draft recommendation 2.6, suggesting the implementation of a citizenship education program, should include provision for the implementation of education of children on their rights and responsibilities in education specifically. Such education should encompass the rights of students in the school yard, disciplinary procedures and any rights contained therein.

Draft recommendation 2.8, should specifically provide that a right to review of disciplinary procedures should vest in the student and/or the student's parent.

Independent Review of exclusions by a panel of school and community representatives should be available for exclusions for more than 5 days. It is felt that exclusion has such a detrimental effect on the educational opportunities of young people that the process should be subject to independent review.

## FEDERAL GOVERNMENT SERVICES - INCOME SUPPORT

The Draft recommendations paper states that the Commissions are not concerned with substantive laws in this area, but more so with the legal processes associated with service delivery. The Federation believes that the Commissions should also be concerned with substantive laws particularly in light of the proposed youth allowance. There is a need for income security for all people. At the moment this seems to exclude young people, particularly those under 18 years of age.

The Federation agrees that young people generally find it difficult to deal with government departments and that few agencies adapt processes, forms or information brochures for children. The Department of Social Security are constantly saying they will change this situation, but real changes never seem to be implemented.

The Federation feels strongly that any income support for young people must recognise the age of independence as 18. At this age they can drink, vote and sign legal contracts and therefore should be assured of income support. This is particularly important in light of proposed changes to introduce income testing of parents.

We agree with draft recommendation 4.3, relating to provision being made for young people living in rural and remote communities in regard to the difficulties they experience in making and pursuing applications. We would like to add that income support should include the added costs of travel and searching for work, and that young people should not be forced to move away from families and friends to secure an income.

Draft recommendation 4.8 talks about gathering information on young homeless people's race and sexual identification. The Federation fails to see how sexual identity is relevant to income support.

The Federation believes draft recommendation 4.9 in relation to independent research into the adequacy of the homeless rate to young people is vital as young people often have the same expenses as adults in supporting themselves, such as rent, food, medical, phone electricity etc.

The most concerning area of income support for children is that of dependent children of migrants. At the moment if someone is going through the appeal process for a Visa or is included in the new two year waiting period, there is no income support. This includes any children of such people, including children born in Australia but whose parents are born overseas.

## CHILDREN'S EVIDENCE

It is important that the special needs of children be taken into account when they are required to give evidence in legal proceedings whether they be victim or witness. But it is also important that children's voices are heard and that practices and procedures

introduced for children giving evidence are not used to silence or discredit children as reliable witnesses.

We commend draft recommendation (DR) 5.1 concerning specialised interview teams, however there must be appropriate and adequate training and resources placed into such a service to ensure that it works effectively. It is important that it does not fall into the same trap as many other children's services, that is, understaffed and under resourced, leading to a high turnover of staff. Further to this, as stated in our earlier submission of July 1996 we believe that initial interviews with a child witness who is a victim of a crime should only be conducted by either trained child advocates or a counsellor skilled in the area of child psychology.

We agree with DR 5.2 for national interview standards but believe this should not be implemented instead of trained and skilled interview teams. The most important first step is for interviewers to be appropriately resourced and trained to be able to follow and implement the standards. Standards are useless if the wrongly qualified or trained people are doing the interviewing.

DR 5.3 concerning standards for videotaping should be seen as a way to lessen the child's involvement in court and the number of interviews required and never be seen as additional evidence or interviews. We therefore agree with DR5.5 that child witnesses not be required to give live evidence at committal hearings.

The Federation strongly agrees with DR 5.6 that courts should give priority to cases where there are child witnesses in terms of setting court dates. It is important to lessen the time, therefore the trauma children experience as a result of involvement in legal proceedings.

DR5.7 to DR5.13 are viewed as vital by the Federation as changes in practice and procedures not just legislation are vital in allowing children's voices to be heard and given validity in our legal system. We particularly agree with measures which aim to lessen the stress placed on child witnesses such as increasing the use of CCTV and decreasing a child's time in court.

We support DR5.14 for the development of literature for children, but it is important that resources are available for translations and updates. There may also need to be different versions for different age groups.

We agree with the changes suggested in DR 5.15 to Dr 5.21 aimed at making the child's experience of court as less traumatic as possible. An additional recommendation we would like to add which was included in our submission last year is that there should be a team of people who are informed of the process of prosecutions in court by the Director of Public Prosecutions who can be contacted by children wishing to discover what is happening in the case in which they are a witness.

## **CHILDREN'S INVOLVEMENT IN CRIMINAL PROCESSES**

The Federation strongly supports the majority of the recommendations made in the chapter headed "Children's involvement in criminal processes". We make the following comments in relation to specific recommendations.

In relation to DR 10.9 (point three) concerning interview friends for child suspects, we believe that potential interview friends should be selected and trained not by police, but by independent external agencies with appropriate input from police during the training process. This is essential to ensure that those who act as interview friends see themselves as independent of the police. Allowing police the control of selection and training of interview friends would seriously compromise the independence of those persons. They are also likely to be regarded with suspicion by other justice system stakeholders.

Point 4 of the same recommendation (DR 10.9) states that if the interview friend has not received training that the role should be explained by a senior police officer. Again, it is not appropriate that this role be performed by police, but rather should be by an independent external organisation.

In relation to point 11 of DR 10.9 The Federation feels strongly that all fingerprinting and other printing procedures should require the obtaining of a court order. The process of fingerprinting etc is likely to stigmatise the young person as much as any other forensic procedure. If anything it is more clearly associated with persons regarded as criminals than any other procedure.

In relation to DR 10.11, we would apply the points made in relation to 10.9 (11) to this recommendation.

We strongly support DR 10.16. We believe this recommendation is essential if the rights young people have while in custody are to be made meaningful.

## SENTENCING AND DETENTION

The Federation commends DR 11.1 and 11.2. With reference to DR 11.3 the Federation submits that while "background reports should be provided in all cases where a detention order...is being considered" they should be available in all jurisdictions in cases where intervention by a juvenile justice authority is likely, to ensure the intervention proposed is appropriate for that young person.

Furthermore, a clinic should be annexed to the Children's Court in each state to provide independent psychologists where required, to provide reports to assist the Court, addressing any psychological aspects that should be taken into account prior to sentencing.

The Federation refers to it's submission to the Commissions in July 1996 and repeats its assertion that a child's criminal record in fact stigmatises a child, in the transition to adulthood. It therefore agrees with the recommendation that convictions be expunged at 18 years of age, but submits that this should occur regardless of whether the child has continued to offend.

DR 11.6 provides a strategy to address the special needs of Indigenous Children in relation to sentencing and is generally supported by the Federation.

In relation to "developing...a national strategy to enhance the participation of indigenous people in the administration of juvenile justice... and appointment of judges and magistrates", it is submitted that alienation is experienced not only by indigenous young people but also children from NESB. This could be addressed by the appointment of

ethnic specific juvenile justice workers and ensuring that those employed in the juvenile justice system generally, reflect a broader cross section of the community. It is therefore submitted that a further DR provide for training programs to increase employment opportunities for people from NESB in the juvenile justice system.

DR 11.5 provides for strengthening the role of the Ombudsman's Offices in monitoring Detention centres. The Federation submits that monitoring, investigation and complaints procedures should vest in an Independent Children's Commissioner referred to throughout the Federation's submission of July 1996. Such a commissioner should have the power to order changes to detention centres and regulate practices and procedures.

## CONCLUSION

The Federation strongly commends the Commissions' recommendation concerning the establishment of An Office for Children to provide policy advice on, and priority to, children's issues across portfolios and in co-ordinating programs and initiatives between and within levels of government. We agree with the roles as listed in draft recommendation 12.1. It is important that such an office be well resourced and financed to be effective. Too often agencies and services dealing with children are under funded and under resourced.

We strongly agree with the Commissions' view that complaints mechanisms, especially those which involve investigation into and criticism of government activity are more appropriately located within independent statutory bodies, rather than a government Office of Children. We however do not believe that this can be adequately covered by the HREOC and the Commonwealth Ombudsman. As stated throughout both our submissions and the Commission's papers, children often fall through the gaps in generalist organisations and policy and procedures. An Independent Children's Commissioner should be established to look after the particular needs and investigate the complaints of one of our most vulnerable groups of people in society, children.