
Inquiries Concerning Children

Four inquiries, two national and two State-based, affecting children in Australia are currently under way.

The first national inquiry concerns the presumption of equal or shared time for children with both parents after the separation or divorce of their parents. The concern is that it will lead to legislative change to create a rebuttable presumption which may conflict with or over-ride the paramountcy of the child's best interests in the current law. There have reportedly been over 1500 written submission to the inquiry to date.

The other three inquiries concern the institutional abuse of children in care. The first of these is a national inquiry into past practices but with terms of reference that allow consideration of current issues. The other two inquiries are based in Queensland and Tasmania and concern abuse in foster care.

Joint Custody Inquiry

The Committee on Family and Community Affairs is conducting a Parliamentary Inquiry into Joint Residence Arrangements in the Event of Family Separation.

The Terms of Reference are as follows:

(a) given that the best interests of the child are the paramount consideration:

(i) what other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a

presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted; and

(ii) in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

(b) whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children.

Written submissions were due by **8 August 2003**. The Committee also plans to hold public forums and hearings.

In announcing the inquiry, the Prime Minister said that historically, when a marriage broke up, the courts had to decide between the mother or the father for residence (or in the old terminology, 'custody'). "It's only in very rare circumstances that other arrangements are ordered," he said. "The situation at the moment is that the presumption is that custody will be given to one or the other. ... What we're looking at is to alter that so the presumption is that it will be a shared arrangement unless circumstances suggest otherwise."

The proposal has attracted considerable media interest and a number of expressions of concern about the "one size fits all" approach. The Chief Justice of the Family Court, Alasdair Nicholson, Labor's Family Court

spokesman, Robert McClelland, and the Democrats' spokesperson, Brian Greig, have expressed their opposition to a law enforcing rebuttable shared residence. And legal experts, Professors Patrick Parkinson and John Dewar have commented on the need to focus on the best interests of the children and the likelihood that such a presumption will suit only a limited number of families able to manage the conflict, the need for close co-location and with sufficient money to set up two houses to accommodate the children.

The National Network of Women's Legal Services has prepared a Briefing paper to assist other organisations and individuals to respond to the Parliamentary Inquiry. The Paper is aimed at workers in generalist community legal centres (CLCs), refuges, family support agencies, counselling services and other community organisations, Legal Aid Commissions, lawyers and counsellors in private practice, and individuals with their own family law experiences. The paper includes background research and arguments for organization to use in preparing their submissions and also includes the contact details for the key politicians.

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National Senate Inquiry into Children in Institutional Care

An inquiry into children in institutional care is currently being conducted by the Senate Community Affairs References Committee. Due to report in December, it aims to uncover the scale of institutional abuse and explore its legacy. The Senate this week voted for the inquiry after years of intense lobbying

by former wards of the state who had been excluded from the previous Aboriginal stolen generation and child migrant inquiries. Children in institutions were often separated from siblings and subjected to punitive routines and harsh corporal punishment. Sexual abuse was also rife in many homes.

The inquiry's terms of reference are wide-ranging and it is expected to also throw light on the current foster care crisis, and put pressure on governments and church agencies to provide compensation and support services to victims. However, while the committee may make recommendations suggesting remedies for the general problems that it identifies, it cannot force the Commonwealth or State parliaments to adopt those remedies nor make recommendations that are binding on other jurisdictions.

Democrats senator Andrew Murray, one of the key players behind the Senate vote, estimates there are between 50,000 and 80,000 former state wards who went through institutions from the 1920s to the mid-1970s. Their testimony would become part of a "collective social record" of a less enlightened period of history and its effect down the generations, he said. "The Government spent about \$69 million on the stolen generation inquiry and about \$3 million on the child migrant report, but here is a significant cohort of Australians that need reconciliation with their past identity," according to Senator Murray.

Dr Joanna Penglase, a former children's home resident and a sociologist at Macquarie University whose PhD analysed the conditions and the effects of such institutionalisation said that many institutions systematically dehumanised children. The effects played out in survivors experiencing higher levels of alcoholism and drug abuse, depression, and crime. Many were unable to later care for their own children.

Leonie Sheedy, founder of the Care Leavers of Australia Network, comprising 330 former state wards, said governments and churches needed to provide support services to her members. This would include counselling services, allowing access to old files and help in locating biological relatives.

The closing date for the receipt of submissions was 31 July 2003 but the Committee will be holding public hearings. Information relating to Senate Committee

inquiries, including notes to assist in the preparation of submissions for a Committee, can be located on the internet at

http://www.aph.gov.au/senate/committee/wit_sub/index.htm

Tasmanian inquiry into abuse in care

An inquiry into the abuse of children in state care was announced by the Health Minister David Llewellyn in mid-July 2003. The inquiry was sparked by an ABC news report on July 11 concerning the story of Hobart man Walter Tusyn who, as a homeless boy in the 1960s, says he was placed into the foster care of a convicted pedophile and raped. Mr Tusyn has lodged a Supreme Court writ in a bid to claim compensation from the State Government.

Advertisements in the public notices of the state's major newspapers, calling for adults who have claims of abuse while in state care to come forward, have led to a number of complainants with fresh claims of emotional, physical and sexual abuse spanning more than 40 years.

A hotline has been established and the Ombudsman said those who called it would have their details taken so an interview could be arranged soon.

All matters brought to the inquiry would be dealt with confidentially and sensitively by people trained in handling claims of child abuse.

According to articles in the *Mercury*, the Ombudsman said "Some people might simply want to unload," Ms O'Grady said. "Some matters could be referred to the police while others may be referred to the Department of Justice and Industrial Relations for compensation."

To make a report to the inquiry call 1800335466 between 9am and 5pm, Monday to Friday. After hours, Lifeline will receive calls to the number on the Ombudsman's behalf.

Immediate access to counselling is offered for those making reports while their matter is reviewed.

The closure date for reports was July 31, but Mrs O'Grady said this was a flexible date.

The inquiry is expected to start a wave of compensation claims, possible police charges and counselling for those involved. Yet many victims will have no avenue to apply for compensation under state law. The cut-off date of the Criminal Compensation Act is for crimes committed after 1976.

The State Government said it was awaiting the Ombudsman's report and that it was too early to comment on possible changes to state law to accommodate the likely rush of claims.

Queensland inquiry into abuse in foster care

Four years after the Forde inquiry into institutional abuse, Queensland's crime and corruption watchdog, the Crime and Misconduct Commission (CMC) will hold public hearings in early October into the foster abuse scandal. The inquiry follows the exposure of the alleged abuse of a significant number of children in the care of one foster family. The CMC inquiry was initiated following claims of departmental inaction over the abuse of six children in foster care in the 1990s after they were removed from their parents in the 1980s because of abuse. The inquiry is to look into the actions of the Families Department and its ministers over a 20-year period. The Chairman of the Crime and Misconduct Commission, Brendan Butler, said the evidence already shows that more than 50 children were fostered over a 20-year period by the family at the centre of the inquiry.

Unfortunately, the systemic failures in this State are nothing new. Similar problems have been exposed in NSW, and Tasmania, and the national inquiry into institutional abuse indicates that similar problems go back decades.

The Queensland Premier, Peter Beattie, has revealed that he has a particular interest because, as he said on ABC's Stateline program on 15 August 2003, "Now I want to make this point really clear and I'm not trying to be melodramatic about it. I have been

a ward of the State and therefore I have a personal commitment to this. I know how important it is to protect our children in care. I know that from my own personal experience. So I'm not going to let anything go if we need to do things better."

He went on to say:

"We've made more reforms than any other government in the history of Queensland and we've funded this area more than anyone else. We've put \$188 million in, ... we've got strategies that are more designed to be preventative rather than simply cure the problem. ... But frankly, I think everyone could have done better, we're doing our best but if there are ways that we can improve it further we will."

According to a report in *The Age* on 15 August 2003, a number of Families Department officers have been stood aside or quit over the abuse claims, amid police and internal departmental investigations. Mr Butler said the CMC would consider an indemnity for department officers who wanted to provide evidence but were concerned they might incriminate themselves in criminal activity.

This inquiry is will run contemporaneously with the current audit of foster carer files being monitored by Queensland's Commission for Children and Young People. The Commission for Children and Young People is an independent statutory authority, and the Commissioner reports directly to the Premier. The Commission is actively involved in the audit, will contribute to the development of subsequent recommendations and will monitor the implementation of those recommendations.

The CMC has called for written submissions and will hold public hearings in Brisbane from October 8.

See <http://www.theage.com.au/articles/2003/08/15/1060871762549.html>

And see

"Premier braces for CMC foster care inquiry"
Broadcast: 15/08/2003

<http://www.abc.net.au/stateline/qld/content/2003/s925542.htm>

A World Fit for Children

UNITED NATIONS SPECIAL SESSION ON THE RIGHTS OF THE CHILD

❖ From the 8-10 May 2002, more than 7000 people participated in the most important conference on children in more than a decade

❖ In his opening address, UN Secretary General Koffi Annan said to the children of the world:

"We, the grown-ups, have failed you deplorably... One in three of you has suffered from malnutrition before you turned five years old. One in four of you has not been immunized against any disease. Almost one in five of you is not attending school... We, the grown-ups, must reverse this list of failures"

❖ At the conference, the nations of the world committed themselves to a series of goals to improve the situation of children and young people, so as to create "a world fit for children":

1. Put children first. In all actions related to children, the best interests of the child shall be a primary consideration.

2. Eradicate poverty: invest in children.

3. Leave no child behind. All forms of discrimination affecting children must end.

4. Care for every child: children should be nurtured in a safe environment that enables them to be physically and mentally healthy

5. Educate every child.

6. Protect children from harm and exploitation.

7. Protect children from war