



# A CASE OF REPEATED ABUSE

by Chris Goddard

CHILD abuse is not only committed by adults, it is defined by them too. How adults respond can make things better or worse for the abused child. It is the double tragedy of child abuse: children who have been badly hurt sometimes get hurt again as adults respond.

This is the story of AB, a 17-year-old girl who on Thursday last week was awarded \$490,000 in damages by a Supreme Court jury, which found that the primary school AB had attended should have acted on warning signs that she was being sexually abused. The school had failed in its duty of care to a grade 3 girl.

The most distressing lesson of AB's story is almost too painful to recount. For anything resembling justice to be done, AB had to tell her story over and over again. She had told her mother, her father and the police. She had been cross-examined in a committal hearing. She had been further cross-examined in the trial of her stepfather, who was found guilty of repeatedly raping her (he spent only three years in jail).

Then, in the Victorian Supreme Court last week, AB suffered what one prays will be the final assault. She was cross-examined by her stepfather, the man who raped her. He chose to represent himself and was allowed to further traumatise his victim, this time in front of a jury.

AB was allowed some protection - some of her evidence-in-chief was given through an affidavit, and she was cross-examined by the rapist through audio-visual link from a remote witness room in a nearby building - but both shields provided inadequate protection.

By the time her stepfather started his cross-examination, AB had already been taken through "incidents" of rape, of beatings that were worse when her mother wasn't there, of disregarded intervention orders. She had lost contact with her grandmother and her half-sister. She had even lost her mother; the day her stepfather was sentenced was the last time she talked to her mother.

In the court last week, AB was asked by Jeremy Ruskin, QC, senior counsel for the state, if she would feel better once this case was over. She replied: "It's always - always going to be in my head, it's always - it's never going to go away and this court case is relating to the actual abuse, so the court case is always going to be there as well."

Then her stepfather began.

His first question was: "...your evidence ... refers to pain in your vagina, right?"

"Yes."

"In your first statement, you said it was up and down for a long time, right, you remember that?"

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## The Second World Conference on Sexual Exploitation of Children

The official title of the 2nd World Congress (2WC) has not yet been set but it will definitely be held 17-20 December 2001 in Yokohama, Japan. The International Planning Committee is 2 representatives each of UNICEF, the Government of Japan, the NGO Group for the CRC and ECPAT. The Focal Point website will contain updates on the preparatory process.

The Committee is working to establish an information framework to enable you to link up and to ensure solid regional representation. We invite you, as soon as possible, to identify a network of national partners and estimate their

technical needs. This framework is to be established in such a way as to be sustainable beyond the 2WC and serve as a tool to develop regional exchanges in an inexpensive and coherent way.

One of the needs will be to ensure translation in local languages. Interested organisations should contact H el ene Sackstein, Focal Point on Sexual Exploitation of Children

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"Yes."

"...do you recall saying that I inserted my penis into your vagina, do you remember that ... no?"

"Yes, I do."

"And then you said it seemed for a long time up and down, is that right?"

"Yes that's correct."

And so it goes on. A convicted rapist, seven or eight years later, is cross-examining his victim, who was nine or 10 at the time of the rapes. There are questions about whether there was blood, about who checked the sheets. It is hard to understand how any of this is necessary, how it might be relevant when he has already been convicted.

"... You say that I forced your legs apart ... right?"

The stepfather then reads from one of the statements the girl had made years earlier: "I can remember him walking over ... drawing the curtain... pulling down my pants... He attempts to suggest there are contradictions in her statements.

AB: "I don't know which paragraph to look at because you are not telling me..." The stepfather persists: "...you say ... that I was on my stomach and (he) pushed my legs apart by grabbing my knees at the back..."

And he persists: "If you look at one statement, and look at the other statement, one statement is very blunt, right, is very plain, but the other statement is more graphic...?"

After some explanation, AB replies: "I'll knock your f---ing block off."

The judge, Bill Gillard, interjects. To AB he says: "...just, please, listen to the question", and to the stepfather: "... You cross-examine as you see fit."

The stepfather says he is lost. The judge advises him: "If you seek to show there is a difference between the two statements, you first of all refer to the first statement, draw (her) attention to the parts you're dealing with, ask her to read that and then ask her to read the similar paragraph in the second statement involving the same incident, if you wish to highlight there is a difference."

And it still goes on. The stepfather, convicted of rape, talks of "allegations".

In response to this insult, AB threatens to come into the court and "f---ing rip your neck off your shoulders".

"Every question you ask ... it takes you 10 ... minutes to ask it, obviously you don't know what

you are talking about..." At one point, Peter Galbally, QC, counsel for the victim, intercedes: "I think the jury are a little bit distressed."

Later, Justice Gillard says to AB: "...I do ask you to listen to the question and answer it, and stay calm. I think we all appreciate the ordeal, but I can assure you the whole procedure will go a lot quicker if you just listen to the question and answer it to the best of your ability." She asks if her stepfather can be made to ask his questions more quickly.

The stepfather asks questions about "the secret". He suggests she had a "secret" with her natural father. "Did you do this...?" "So you totally deny this...?" "I am stating to you..."

The words "Witness distressed" appear in the transcript. It goes on, "Justice Gillard: 'All right, now come on ... please.' (Witness distressed).

AB: "You're telling me to come on, and you're letting this arse-wipe cross-examine me and I'm not even in the court room to smash him. Don't give me that shit."

And later, "Justice Gillard: 'Look, this is getting a bit out of hand...' (Witness distressed).

AB: "Well you guys are the ones that wanted him to cross-examine me, not me - not me..."

In Britain, a series of much-publicised rape trials has led to a ban on rape defendants, rather than their lawyers, cross-examining their alleged victims. In one case, reported in *The Daily Telegraph*, the victim was questioned for six days about the details of her 16-hour rape ordeal. The rapist wore the same clothes he had worn when he assaulted her.

The victim later spoke about the case in the hope that other women would be spared such experiences. "I feel that I have been raped twice, once in his filthy den and once in front of a judge and jury... When a rapist is asking the questions, he knows what he has done, and is furthering the act," she said.

AB's case was even worse than this. AB's was a civil case, not a criminal trial involving life and liberty. Her stepfather had already been convicted of repeatedly raping her when she was a child. Even now, AB is barely more than a child.

The courage and resolve that young woman showed last week must not be in vain. What happened to AB in that Melbourne courtroom must never be allowed to happen to any rape victim ever again. ♦

*Chris Goddard is Professor of Social Work, Monash University, and a member of DCI's Advisory Panel.*

## The State of Children's Rights in the UK

by Moira Rayner

continued from page 1

There are highs and lows in children's rights protection, here. The UK will shortly be shifting up a notch in the rights protection community when the Human Rights Act is fully proclaimed on 2nd October (it's already in effect in Scotland). The Act doesn't set up a Human Rights Commission, but leaves it to Britain's Common Law courts to determine whether public authorities have complied with the standards set by the European Convention on Human Rights (ECHR).

### Embarrassing criticism

How well the courts will do this is unpredictable. I have heard the former Lord Chief Justice publicly express concern that the UK is to adopt an 'alien' rights-based culture. Yet the UK government has had to act. It has been embarrassed several times by determinations of the Court of Human Rights in Strasbourg which criticise its treasured institutions:

- The two 11 year olds convicted of murdering the Bulger toddler in Manchester had been denied a fair trial in adult-focused, incomprehensible court proceedings. Their (judicial) imprisonment term was unjustly extended by the executive decision of the then Home Secretary.
- The Common Law defence of 'reasonable chastisement' did not protect a 14 year old bashed by his stepfather for years, or any child, from cruel, inhuman or degrading treatment (it exonerated the bully when he was charged).
- A social services department had failed to protect abused children from such breach of their rights over a five-year period when it knew of bashings, starvation and imprisonment (and no doctrine of Crown immunity was relevant).



Moira Rayner is the recently appointed Director in the Office of the Children's Rights Commissioner, London. She is also a member of DCI's Advisory Panel and until recently was Chair of the National Children's and Youth Law Centre, Sydney.

Children are entitled to the benefit of all of the ECHR rights. One youngster has got in early, challenging a school that excluded her for committing a minor criminal offence which she denies and of which she has not been convicted. She says that this will deprive her of her right to an education.

### Local talk of rights

On the other hand, children's rights are constantly being legitimated. At a local government level there is genuine, long-standing interest in children's rights, perhaps because the

boroughs are responsible for the child protection system (there is no mandatory reporting, here). Several have created 'children's rights officers', funded by charitable bodies, to advocate for children against them. Several have adopted the UN Convention on the Rights of the Child as their values-base.

Children are required to have appropriate complaints or grievance procedures – though they appear to be underused (perhaps because of the 'Caesar judging Caesar' perception). Some central government programs (such as Quality Protects) require boroughs to consult with children on service delivery and report on the consultation as a performance measure.

There is a refreshing willingness in the English professions to talk children's rights. The Association of Lawyers for Children has co-opted me on to their committee. Children's societies talk 'rights' where their Australian equivalents cower behind 'interests'.

### Action on poverty but not punishment

A hundred children's groups and prominent professionals have formed the Children Are Unbeatable alliance to persuade the government

to prohibit all corporal punishment of children. The prospects are not entirely favourable. The government's discussion paper (issued late last year) proposed law changes to prescribe what parts of a child's body one could smite, and with what implement. (How obscene!)

Yet this government appears genuinely committed to, among other things, eliminating child poverty. Gordon Brown, the Chancellor, is personally and sincerely committed to this. In the last session he announced the establishment of a 'children's fund'. A few weeks later, the Prime Minister set up a Children's Unit, with all the important ministers on the committee, addressing several government portfolios (but sadly administered on a day to day basis in the Education ministry under the supervision of a non-Cabinet Minister, Paul Boateng). The Unit will focus on child poverty, but there is clearly potential for it to develop the kind of government policy overview that children's rights advocates want.

There is no statutory children's rights commissioner in the nation and no plans for one - yet. The recent Care Standards Bill, which was enacted in response to the evidence of systemic abuse of children in Welsh institutions, creates an office called 'children's commissioner' which is limited to ensuring children have effective grievance procedures and that nobody 'covers up' any more. Scotland is 'considering' it; there is mixed support and opposition for such a role in England; Ireland has a Human Rights Commission and does focus on children's rights.

#### **A city up to standard?**

My role as Director of London's Children's Rights Commissioner's office is to perform that function for the new Greater London Authority, over the next three years. The Authority did not appoint us. We are funded by the National Lottery Charities Board, two other charities and three of the country's leading children's groups, to prove that a children's rights commissioner improves the quality of decision-making, and that the UN Convention on the Rights of the Child (CROC) is a proper standard for judging government, of all levels, performance. We start

in London - to make the case that every child should have a children's rights commissioner.

The Greater London Authority's members and Mayor were elected in May 2000, as a super-Council for the whole of London: above it, the national government and below, the boroughs, whose members are also elected and carry out essential planning and child protection, housing and other services. The GLA is uniquely placed to oversee the state of London's children. Every decision it makes, whether about planning, safety, transport, traffic, the environment or London's cultural life, affects every London child, now and in the future. It needs a strategy for London children that cuts through all the boundaries.

#### **London's jumble of children**

London children make up more than 20% of London's population - 1.74 million of them, from a glorious jumble of cultural, ethnic and community backgrounds. The majority of children of asylum seekers - about 45,000 children - are thought to attend London schools. It is thought that at least the same numbers of refugee children aren't attending school at all. They are not alone.

Thousands of London children don't go to school, either truanting or 'excluded' for misconduct. These exclusions are linked to parental poverty, ethnic minority status and poor reading skills. The Blair Government has set targets for reducing exclusions, which soared by 400% since 1991, because out-of-school children stop learning and are easily drawn into crime. In London, it's thought that 5% of all offences are committed by children during school hours. In 1997, 40% of robberies, 25% of burglaries, 20% of thefts and 20% of criminal damage were committed by 10 to 16 year olds.

London children are more likely to be in need of care and protection than other parts of the country. Inner London children are much more likely to be on child protection registers: 70 per 10,000 children in Inner London are looked after by local authorities, compared to 48 per 10,000 nationally.

Continued on page 10

continued from page 9

### **Grim urban poverty**

Poverty has a grim effect on children's wellbeing, creating and exacerbating risks (homelessness, domestic violence, property crime), intensifying vulnerability, and diminishing resilience. Relative child poverty has trebled in the last 30 years. London has one of the biggest populations of deprived children in the developed world.

Child poverty is usually caused by their parents' unemployment. London has about twice the national proportion of children living in households where all adults are non-earning. Eligibility for free school meals is used as a proxy measure for low family income: the following proportion of pupils in local-authority maintained secondary schools were eligible for free school meals in 1996/97:

Inner London 46%

Outer London 22%

Greater London 29%

The average for the whole of England was just 17% (Child Poverty Action Group 1999). Five of the ten most deprived wards in England are within Greater London. Infant mortality rates in some London boroughs are up to three times higher than in the more affluent outer boroughs.

### **Crowded city living**

Poverty affects the quality of housing for families with children. Far more London children live in overcrowded accommodation than the national average – 10% nationally, 26% in Inner London and 15% in Outer London. This affects family cohesion. More London children (18%) rang ChildLine over concerns about their family relationships than the national average (13%), reflecting the high density and stress of urban living. Of ChildLine's London callers twice the national average needed to talk about running away or having been thrown out of home by parents: 32% of these callers were 12-13 years old.

London has disproportionately high rates of severe mental illness and drug abuse (28% of the nation's notified drug addictions among 12% of the population) and young Londoners are

disproportionately represented in these figures. One out of 7 London children suffer from asthma, caused or aggravated by factors within government control – air quality, traffic density, other pollution, inadequate green spaces, play areas and local facilities. Children's health is always affected by government planning and spending priorities.

Many London children lack regular outdoor exercise and the small freedoms that make a child's life happier and healthier because of unsafe streets, dangerous or dirty public spaces and facilities, and traffic hazards. Children living in poor, deprived neighbourhoods are particularly disadvantaged in terms of unsafe open spaces and streets.

Most London public transport and facilities and schools are inaccessible to disabled people and children in pushchairs or prams. Better housing, cleaner streets, better air quality, less traffic, accessible public transport, footpaths and public buildings would, of course, all improve life for London's children. It is in the GLA's hands to address this.

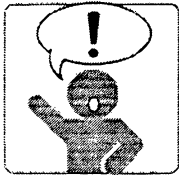
### **Making a "child-friendly city"**

There is much to be done. During his election campaign, the Mayor of the Greater London Authority, Ken Livingstone, committed himself to making London a "child-friendly city", by establishing a Children's Strategy for London through the active participation of children throughout London. He also promised to:

- appoint a Children's Champion from the membership of the Greater London Assembly, to co-ordinate and to establish the Children's Strategy for London
- protect and enhance the lives of London's 1.74 million children by building co-ordinated services that meet the needs of children and sharing best practice across the 32 London boroughs, and
- ensure children have a voice, through a Greater London Assembly for children and including children in policy development.

Now, all we have to do is help him achieve that! It will be a busy three years. ♦

- Moira Rayner



# Young People's Participation in the World Forum 2000

by Asaf Fisher

Too often the views of children and young people, at conferences where children and young people's issues are discussed, are drowned out by a hoard of competing voices. Measures need to be taken to ensure that the views of children and young people are heard clearly and taken into serious account in decision making. A news sheet is an example of such a measure, one that was used effectively at the recent World Forum 2000 (WF2000) conference held in Sydney between 9 – 11 August.

Most conference models cater for the needs of professionals. They comprise substantial keynote addresses, lecture style workshops and strictly structured agendas. Children and young people are simply expected to fit into the conference framework. This makes for an exclusive environment in which children and young people do not feel comfortable to participate. Consequently, their voices are not heard.

In many cases there is a clear disparity in skills and experience between young conference delegates and older delegates. This does not negate the value of a child or young person's contribution to a conference. Rather it has a bearing on how effectively they are able to state their case and subsequently influence outcomes.

*WF2000 News* is a news sheet that was produced by a group of four young people aged between sixteen and twenty-four and distributed daily to over four hundred WF2000 conference delegates. It highlighted some of the main issues that were dealt with during the conference and stirred discussion between conference delegates.

One of the main functions of *WF2000 News* was to enhance the voice of young people. In the role statements that each of the reporters received was a specific clause outlining their responsibility to seek the views of conference delegates, particularly young people. By serving as a mouthpiece, *WF2000 News* addressed some of the imbalance that often exists amongst young and older conference delegates.

Children and young people's participation was one of the themes of *WF2000*. What emerged by the second day of the conference

was that the participation of young people was not as effectively modeled as it could have been. There was a growing sense of frustration amongst many of the young people who attended the conference. Many felt that young people should have been more extensively involved in the plenary sessions of the conference and the workshops. This view was echoed by many of the older delegates.

The reporters of *WF2000 News* were able to bring to the surface the views of conference delegates, particularly about participation, which may not have otherwise been addressed. A poll of conference delegates was one of the ways that conference delegates were able to speak out. In response to the question "Are young people and their views adequately represented at WF2000?" fifty three out of sixty five respondents answered "No." While young people's participation had been constructed as an important part of the conference agenda, the effectiveness of the participation strategy had not been questioned until this point.

*WF2000 News* was effective in bringing some pressure to bear over major conference issues, particularly the participation of children and young people. Perhaps a measure of this effectiveness is the prominent role that a panel of young people played during the opening session of the final day of the conference. This panel was not officially part of the conference agenda and arguably it was scheduled in response to the fervour generated by the *WF2000 News* poll. Perhaps the best indication of the news sheet's ability to indirectly affect the outcomes of *WF2000* is the numerous references to children and young people's

- continued on page 12

- continued from page 11

participation in the conference declaration, "A Call for Action."

The production of *WF2000 News* was a time-consuming and intensive process. The fact that a group of young people was able to compose such a product dispelled the myth that all young people are incapable of anything other than tokenistic participation. This helped address the imbalance that inevitably exists between young and older conference delegates by breaking down the negative attitudes that often hinder children and young people's participation.

The success of *WF2000 News* can be attributed to a number of factors. Firstly and importantly, the content of *WF2000 News* was not censored. Secondly, a skilled group of young people was dedicated to publishing the news sheet daily. Thirdly, *WF2000 News* had the support of conference organisers who provided photocopying facilities and did not intrude in the production process. Finally, a considerable deal of preparation had been done before *WF2000*

to ensure that the production process would operate smoothly.

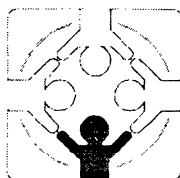
Work needs to be done to ensure that conference models are relevant for children and young people so that they feel comfortable to participate. Measures need to be taken to bridge the gap in skills that is often apparent between young and older conference delegates to ensure that the voices of children and young people are not lost amongst the more dominant voices. *WF2000 News* is a model that was used to partly address the imbalance that existed between young and older conference delegates at *WF2000* and explore important issues such as participation from the perspective of young people.

Copies of *WF2000 News*, an explanation of how it was produced and the reporter role statement is available on the Internet at [www.acwa.asn.au/wf2000](http://www.acwa.asn.au/wf2000). ♦

*Asaf Fisher, 18, is a trainee policy officer for the NSW Commission for Children and Young People and attends the University of Technology Sydney where he is studying for a double degree in Communications and International Studies.*

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## INTERNATIONAL YOUTH PARLIAMENT 2000



300 delegates from around the world have been chosen to participate in the first International Youth Parliament (IYP2000), to be held in Sydney, Australia from 19-28 October 2000. It will be hosted by Community Aid Abroad and Oxfam Australia.

It will unite and energise youth from around the world to tackle issues of poverty, conflict and culture. Emphasis is on action and training, developing skills for effecting change and seeking youthful solutions to global problems.

Delegates from 161 countries were selected from 1550 applications. Two representatives aged between 15 and 28 will attend IYP 2000 from each participating country.

For more information, delegate profiles or to make a contribution contact:

Fred Clark - 02 9264 1399

Lisa McLean - 0402 313 078 or email: [parliament@caa.org.au](mailto:parliament@caa.org.au)

Web site: [www.caa.org.au/parliament](http://www.caa.org.au/parliament)

## NATIONAL YOUTH ROUNDTABLE 2001

50 young Australians aged between 15 and 24 are being sought for the Commonwealth Government's next National Youth Roundtable.

The meeting will discuss issues and provide input into policy and services that affect their generation.

People from varying educational, employment and cultural backgrounds all over Australia are invited to submit applications to attend.

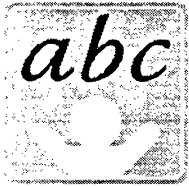
They should have a demonstrated interest in young people's issues and be prepared to part of an ongoing commitment to the process of consultation.

Applications close: 15th September 2000.

For information:

Freecall: 1800 624 309

Website: [www.thesource.gov.au](http://www.thesource.gov.au)



# The National Inquiry into Rural and Remote School Education

by Chris Sidoti

When I was appointed Human Rights Commissioner in 1995 I stated publicly that protecting and promoting the rights of children would be my top priority. I am therefore pleased that two of my most significant undertakings while in this position were concerned with children's rights. The first was the National Inquiry into Children and the Legal Process (1995-97), undertaken jointly with the Australian Law Reform Commission. The other was the National Inquiry into Rural and Remote School Education that has recently concluded.

I would like to outline briefly the key findings and recommendations of the Rural and Remote Education inquiry. But first it must be stated upfront that education is a significant issue of children's rights. The *Convention on the Rights of the Child* (CROC) leaves no doubt about this. Every child has the right to education (CROC article 28) without discrimination including discrimination on the ground of race or disability (article 2). That education should be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential among other objectives (article 29).

Education is also fundamental to the full enjoyment of most other human rights: most clearly the right to work but also the right to health. And to the exercise of social responsibilities including respect for human rights.

Many young people themselves understand the centrality of education to the exercise of rights, even if they don't articulate it specifically

## Thanks, Chris!

The publication of this article coincides with the end of Chris Sidoti's term as Australia's Commissioner for Human Rights. DCI-Australia takes this opportunity to acknowledge his strenuous efforts to place children's rights on a wide range of agendas and his warm support for those who speak out on those issues, especially children and young people themselves.

in human rights terms. I will never forget a 15 year old student named Trevor whom I met in Nguuu in the Tiwi Islands north of Darwin during the inquiry. No one from Nguuu has ever completed year 12 at school, let alone gone on to university. Trevor, told us

*"School is about education and education is power for me. And there are a lot of things that I need to know about the whole world. When I leave school I might go to a university in Darwin, I want to be a scientist. In future I hope to be President of the Land Council."*

Education is power – personal and political. That's why it's recognised as a human right.

The Commission's National Inquiry into Rural and Remote Education commenced in February 1999. It was a response to our *Bush Talks* consultations ([http://www.hreoc.gov.au/human\\_rights/rural/bushtalks](http://www.hreoc.gov.au/human_rights/rural/bushtalks)) which identified education as a serious concern in rural Australia. The terms of reference directed the Inquiry to examine the provision of education for children in rural and remote Australia with reference to

- the availability and accessibility of both primary and secondary schooling
- the quality of educational services, including technological support services, and
- whether the education available to children with disabilities, Indigenous children and children from diverse cultural, religious and linguistic backgrounds complies with their human rights.

The Inquiry visited 28 rural and remote communities in each State and the Northern Territory, taking evidence and holding discussions with students, teachers, administrators, parents and other community members. It also took formal evidence in every capital city and received 287 written submissions. A national survey was conducted for the Inquiry by the Youth Research Centre at the University of Melbourne to which there were 3,128 respondents, 55% of them rural and remote area students.

Continued on page 14



The inquiry confirmed the disadvantage experienced by rural and remote school students on nearly every indicator of education including availability, accessibility, affordability and acceptability.

### Availability of education

On the basic criterion of availability of education, many rural and remote children are losing out. We were particularly concerned about the lack of primary education for many children living on Indigenous Homeland Communities and outstations, of which we heard evidence in the Kimberley region of WA and in the Northern Territory. In the 1987 report *Return to Country*, which investigated the homelands movement, it was estimated that between 700 and 1,000 children in north-east Arnhem Land alone had no access whatsoever to school education. There are still 15 East Arnhem Land communities without education provision.

Perhaps even more disturbing – given the very substantial numbers affected – is that secondary schooling is simply unavailable – that is, it is not provided – outside the six major urban and regional centres in the NT. Community Education Centres in remote communities provide only the most basic primary education, with limited tuition support for secondary students to study by correspondence. Very few do so.

The inquiry recommended strategies to ensure that children living in Homeland Centres have effective access to education. It also recommended a national audit of secondary provision and a national plan of action to ensure effective access to secondary education for all students in every state and territory.

### Accessibility of education

Inaccessibility is perhaps the most widespread problem for school education in rural and remote Australia.

A child with a disability – let's say she uses a wheelchair and needs assistance with toileting

– will confront difficulties enrolling in the school of her choice in any Australian city. Imagine how her difficulties are compounded when her town has only one school, and that school is built on two levels with no lift to the upper floor, no ramps at any entrance, no handrails in the toilets, all of which are too narrow anyway to accommodate her wheelchair. There is no funding for a special education teacher and no local resident qualified to take on the role of aide. There is little awareness at either the school or the district level of the requirements of the Commonwealth's *Disability Discrimination Act* or the State's own Equal Opportunity legislation

– both of which apply. And the school bus is probably inaccessible for wheelchairs.

This child and her family have faced many hurdles over the years: her specialist visits only once each year – or not at all. When she develops an infection she must travel to the nearest regional centre or the State capital. There is no

physiotherapist in town; although that professional visits irregularly, it is not always possible to get an appointment and it's usually a different person each time.

The full inclusion and adequate support of rural and remote students with disabilities is going to require a substantial infusion of funds and training, starting with a major attitudinal shift.

Of course, accessibility of education also encompasses many other issues. For example, access to appropriate technology infrastructure and maintenance support remains problematic for many rural and remote school students in Australia. Internet access is unreliable and can be very costly by comparison to metropolitan centres. Many remote communities across Australia lack grid power or have intermittent power. Access to professional development programs in information technology is a major concern for rural and remote teachers. In the face of all these barriers, it is no wonder that the overwhelming perception of students, teachers and parents in rural and remote communities was that they were being left

*"School is about education and education is power for me. And there are a lot of things that I need to know about the whole world. When I leave school I might go to a university in Darwin, I want to be a scientist. In future I hope to be President of the Land Council."*

Trevor from Nguuu, Tiwi Islands, NT

behind by the information age.

### **Affordability of education**

I was frankly astonished to find that most education department staffing and funding formulas make almost no compensation for the extra costs and time involved in providing education in rural areas, in participating in professional development for staff and in sports competitions and other extra-curricula learning opportunities for students, in getting repairs done – both to buildings and computer equipment.

The major compensatory program is the Commonwealth's Country Areas Program – administered through State departments – and not always equitably we were told.

The inquiry called on education providers to provide targeted funds to rural and remote schools for professional development, as well as paying for teacher replacement to accommodate staff's professional needs. We also argued strongly that teachers need to be prepared to teach in rural and remote areas. Teacher training institutions should incorporate into teaching courses compulsory modules on rural and remote teaching and they should facilitate rural placements and recruitment strategies to prepare and encourage undergraduates for rural teaching positions.

Affordability of education is a major problem for families as well as schools and staff. We were told of the extensive costs of travel, board and excursions for families and the effect this has on their capacity to provide quality education for their children. There may also be loss of income because of the children's needs for educational support.

### **Acceptability of education**

Is the education on offer acceptable to all students and their parents? Data on Indigenous children's school participation indicates that their needs are not being met. Only 87.6% of Aboriginal boys in the Northern Territory participate even in the compulsory years of schooling. That means that one in eight do not. Only one quarter go on to complete year 12.

Many of our recommendations in the report detail the need for culturally appropriate education for Indigenous communities in rural and remote areas, from incorporating Indigenous community knowledge into

curriculum and teaching, through to the involvement of Indigenous communities in education decision-making. Our reports set out some fundamental principles that should underpin future planning and provision of education to Indigenous students throughout Australia, based on self-determination and respect for Indigenous culture and rights.

### **The way forward**

The Commission has released a series of publications to detail the findings and recommendations of the inquiry. All of them are available on the Commission's website. *Emerging Themes* ([http://www.hreoc.gov.au/pdf/emerging\\_themes.pdf](http://www.hreoc.gov.au/pdf/emerging_themes.pdf)) highlights key issues that arose during the inquiry. *Education Access* ([http://www.hreoc.gov.au/pdf/rural\\_and\\_remote/Access\\_final.pdf](http://www.hreoc.gov.au/pdf/rural_and_remote/Access_final.pdf)) comprises case studies of children without access to a school or adequate curriculum, demonstrating very clearly the human impact of these issues, *School Communities* [http://www.hreoc.gov.au/pdf/rural\\_and\\_remote/school\\_communities.pdf](http://www.hreoc.gov.au/pdf/rural_and_remote/school_communities.pdf) showcases positive and innovative models of community involvement with schools to overcome the problems faced by remote areas.

The *Recommendations* report ([http://www.hreoc.gov.au/pdf/Rec\\_book.pdf](http://www.hreoc.gov.au/pdf/Rec_book.pdf)) details the 73 recommendations of the inquiry, aimed at enhancing the availability, accessibility, affordability and acceptability of school education for all children in rural and remote Australia. What is needed to ensure these recommendations are implemented effectively? There can be no denying that more funds are needed. We framed our recommendations with a close eye on the resources implications. They do not present what we consider ideal but what we concluded was realistic, achievable, in financial terms. However, we must accept that some resources will be required. Still, if the NSW Government can find the billions of dollars needed for the Sydney Olympics and the federal government hundreds of millions of dollars for the Collins class submarines, surely we can find the money to guarantee that rural and remote children receive the education they deserve. As far as I am concerned, education for rural and remote children is a more important issue than the Sydney Olympics or the Collins class submarines. It is an issue of children's rights and human rights. ♦

- Chris Sidoti



# Ministerial Statement on Juvenile Justice

*Comment by Richard Bourke*

On 17 August 2000 the Victorian Minister for Community Services, the Honourable Christine Campbell MP delivered a Ministerial Statement entitled "A Balanced Approach to Juvenile Justice in Victoria". The Statement sets out the juvenile justice policy of the Government for the next few years. The programs and initiatives announced in the Statement are supported by \$34.2 million in funding over the next four years. DCI member Richard Bourke, Secretary of the Criminal Bar Association, casts a critical eye over the Statement.

## *Philosophy of the Statement*

The Statement proclaims a philosophical approach favouring crime prevention through diversion and rehabilitation placing particular emphasis upon the diversion of young people from custodial care and the successful rehabilitation of incarcerated young people into the community.

The Statement specifically acknowledges the importance of the "dual-track" sentencing option of senior Youth Training Centre (YTC) detention as an alternative to imprisonment for 17-21 year olds. It also recognised that increased numbers of young people sentenced to senior YTC calls for legislative change, new policy and improved initiatives.

## *Jurisdictional Limit of the Children's court*

The Statement indicates that the Minister and the Attorney-General "are working to bring Victoria into line with most other states in recognising that the Children's Court should be extended from 17 to 18 years of age." The Minister announced that this legislative change would not occur until the necessary infrastructure of support services is in place to support the change.

## *Young Males in Senior YTC*

Importantly, the Minister stated that she "aims to limit the numbers in custody and finally allow the closure of the old Turana facility". This is a reference to the 50 beds in the "Class A" section of the Melbourne Juvenile Justice Centre. This facility currently houses 17-21 year old males undergoing senior YTC detention.

The Statement makes clear that there will be no privatisation of YTC facilities, the Government having a non-delegable duty of care in the case of young people in-custody. The previous Government had indicated an intention to commission a new, privately operated senior YTC facility to replace the current Class A beds.

## *Adult Community Based Corrections*

It was announced that the Department of Human Services and the Department of Justice have been conducting meetings for the past three months, jointly planning complementary pilot programs to provide better quality supervision and support for young offenders (17-21) on community based orders. The Juvenile Justice pilot is scheduled to commence on 1/12/00.

## *Court Advice and Bail Support*

The Statement recognises the role of juvenile justice court advice staff and this program will be extended beyond the Melbourne, Dandenong and Sunshine courts to a number of other metropolitan and rural courts. Bail Support will also be piloted, with brokerage funding being made available for purchasing support services at the time of bail and during the pre-sentence period.

## *Cultural Issues*

Cultural issues are given significant attention in the Statement, mainly in relation to young Aboriginal offenders and offenders from Cambodian, Laotian and Vietnamese backgrounds, with plans for the development and implementation of culturally appropriate programs and diversion strategies.

Top-up funding was announced for a number of Juvenile Justice Units to employ Koori and Cambodian/Laotian/Vietnamese (CLV) support and community liaison workers, and the workers should be in place by 1/10/00. Funding has also been made available for culturally specific post-release services.

There will be scholarships for young people from CLV and Koori backgrounds to enter welfare courses, and the Minister indicated that Juvenile Justice recruiting would target CLV, Koori and female staff in order to match the client group.

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## ***Gender Issues***

The Statement highlights the particular issues facing young women in the juvenile justice system, particularly those reintegrating into the community from custodial care. The pre-release community house program for young women was singled out for praise. A similar program will be introduced for

young men 17-21 with some modifications in the model used to account for gender difference – funding for this program commenced on 1/7/00.

## ***Substance Abuse and Young Offenders***

As to drug abuse, the Statement mandates a harm-minimisation focus encouraging young people to seek assistance to reduce or manage their drug use safely. More appropriate accommodation options for drug addicted young people are promised as well as additional initiatives to provide support in the community. Funding through “Turning the Tide” has been extended to June 2001 providing funding for relapse support programs. Residential drug treatment programs on-site at Juvenile Justice Centres will be expanded.

## ***Other Matters***

- A strong statement was made condemning mandatory sentencing as “unjust, racist and immoral and an affront to judicial independence.”

- Victim issues were the subject of comment and praise was given for the Children’s Court’s group conferencing program.

- The police cautioning program was noted as an important part of the diversionary program and it was announced that it would be expanded.

- The value of the work of the Youth Parole Board was noted and funding will be made available to increase the level of supervision and support, particularly during the first few weeks of release on parole.

## ***Some Brief Observations on the Statement***

The philosophical starting point of the Statement is correct and to be commended, as are almost all of the initiatives which have been announced.

As always, it will be the capacity of the Department and the Government to deliver that will matter. World-weary scepticism aside, there is cause for praise for the Statement and its initiatives and cause for some optimism as to the effective implementation of the Statement’s key points.

However, even this early in the implementation of the Statement, it is worth making observations on three particular topics:

## ***1. Closure of male senior YTC beds***

The Class A facility slated for closure was scheduled to be decommissioned in 1997, when the remodelled Malmsbury facility was opened. Malmsbury had increased its capacity from 56 to 74 beds. Unfortunately, male bed numbers did not reduce but continued to increase beyond existing estimates.

Custodial numbers for males in senior YTC are such that Malmsbury is for all intents and purposes full, and Class A is usually running at 90% of capacity or greater.

The physical environment of the Class A facility is an absolute disgrace and it should be closed as soon as possible.

In addition, I have always held the view that the incarceration of 17-21 year old represents an admission of failure by our community - that we are either not able or not willing to manage our community and our community-based corrections in a way that can keep young people out of custody.

For these reasons I wholeheartedly support the closure of the beds at Class A and am also wholly supportive of a policy of improving community based corrections in such a way as to prevent the need for the Class A beds being replaced elsewhere in the system.

However, it is here where the problem lies. I do not believe that the changes announced in the statement are either sufficient or are being given enough lead in time to reduce bed numbers sufficiently to allow the closure of the Class A beds.

One of the significant factors in the increase in senior YTC numbers is the patent inadequacy of the adult community correctional programs to deal with the needs of 17-21 year old offenders. It is my perception that courts have lost faith in community based orders as a viable rehabilitative option for many young offenders, leaving no option but incarceration. If a community based, rehabilitative disposition with a real prospect of success can be offered to a sentencing court common sense, practice wisdom and legal principle unite to avoid a custodial sentence even in very serious cases.

The Statement recognises this service gap and announces pilot programs, one of which may commence as early as December, to meet it. However, this will be insufficient to have any significant effect on senior YTC numbers for at least 12 months.

continued on page 18

continued from page 17

Almost as big a problem as the continued input of senior YTC sentences at the front end is the inertia of the Juvenile Justice Division as a bureaucracy at the back end. Experience suggests that Departmental staff at the coal face may not be able to engage in the sort of case practice required to radically reduce bed numbers; not in court, before the parole board, in case planning or in direct service work.

The Minister has committed herself personally and politically to the closure of the beds but if this plan is to succeed Departmental staff will need to be clearly informed that they must take immediate steps and that defensible risks will be supported even where the occasional but inevitable catastrophes arise.

Given the above the obvious fear is that the Department will reduce senior YTC numbers by the simple expedient of assessing young people as unsuitable for detention, thus diverting them into adult prison and off the Department's books. Even more worrying would be the administrative transfer of young people to prison who were sentenced by a court to be detained in a YTC.

With this in mind, practitioners should be extremely vigilant in relation to any attempt by the Department to change senior YTC suitability criteria, any change in the rates of favourable assessments or increased transfers of sentences from YTC to prison. I would be very interested in being advised of any suspect cases that practitioners may come across.

It is imperative that data collection systems are designed to pick up these unwanted consequences and it is expected that they will be put in place. Departmental representatives say they are alive to the danger and that any increase in 17-21 year olds in adult custody will be monitored.

## **2. *Lifting of the jurisdictional limit of the Children's Court to 18***

This is one of the simplest reforms imaginable and will have a fundamental and beneficial impact on Victoria's juvenile justice system. It has bipartisan support in Parliament, unanimous support amongst community stakeholders, will bring Victoria into line with most other states as well as the United Nations Convention on the Rights of the Child, and has been the subject of repeated public commitment by this Government for some time.

It is extremely disappointing that this legislative change will not be implemented in the Spring Session of Parliament in 2000.

The Minister's explanation - that the delay is necessary to ensure that the service infrastructure is present to support the change - rings loudly of a bureaucracy dragging its feet. The Department of Human Services must support and facilitate the amendment rather than present obstacles to its implementation.

It is simply unacceptable that legislation is not available for the Spring Session, and there will be no excuses if legislation is not introduced in Autumn 2001.

## **3. *A brief word on the budget***

The injection of the \$34.2 million is very positive and represents a substantial investment, particularly in the context of the last few years. However, given the breadth of the initiatives in the Statement the money is necessarily spread very thin, possibly too thin to be effective in some areas.

In these times of economic rationalism where funding is dependent on evidence based research, many of the initiatives in the Statement will be put under unrealistic pressure for quantitatively measurable results - Treasury will ask for too much too soon. It is important that well founded initiatives are given a full opportunity to succeed rather than being doomed to failure for want of an adequate commitment of funding.

- Richard Bourke

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A copy of the Statement can be found at: <http://www.dhs.vic.gov.au/hs.html>

Other juvenile justice resources can be found at the DCI website: [http://members.dynamite.com.au/dci-aust/html/research\\_advocacy.html](http://members.dynamite.com.au/dci-aust/html/research_advocacy.html)

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## **Mandatory Sentencing Update**

A new private members bill to end mandatory sentencing for both adults and children in respect of property offences, has been introduced in the Senate. In March, the Senate passed a Bill introduced by the Greens, and co-sponsored by the Democrats and the ALP, which only dealt with mandatory sentencing of children. That Bill stalled in the House of Representatives due to lack of support from Government members.

The Federal Government money that was offered to the Northern Territory Government to introduce diversionary programs in order to lessen the impact on minor offenders, has been withheld because the NT Government failed to honour its commitment to develop diversionary programs.

- Helen Bayes