

INDEPENDENCE



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VALUE CHILDREN NOW

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OFFICE OF THE  
COMMISSIONER FOR CHILDREN

ANNUAL REPORT  
2002-2003

**CHILDREN ARE SACRED**

**Patmalar Ambikapathy**  
**Commissioner for Children**  
**Tasmania**

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## FOREWORD

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It is my pleasure and privilege as your Commissioner for Children in Tasmania, to present this third Annual Report, to Parliament, through the Honourable Minister for Health and Human Services, David Llewellyn.

The theme of my Annual Report this year will be based on the position expressed to us by an Aboriginal Elder Tex Skuthorpe from the Noonghaburra community at Goodooga, in north western New South Wales. NAPCAN (the National Association for the Prevention of Child Abuse and Neglect ) printed posters of his paintings featuring designs from his country Noonghai, and one such painting was titled “Children are Sacred”. He states:

“This painting is about respect for children and the responsibility of adults to care for children in much the same way as children were cared for in traditional communities.

In traditional society children and older people were the most important members of the community - the old people for what they had learnt through their life and the children because they would carry on the law, the religion, the beliefs and the culture. The role and responsibility of all other members of the community was to look after the older people and the children.

Early teaching and care of children was the primary responsibility of the parents, although other family members and community members were also involved. As the child matured into teenage years, teaching would sometimes be the responsibilities of other communities which the child could visit as part of their initiation. Throughout this learning the child was encouraged to experiment and to experience their learning as deeply as possible. The teaching was delivered through art, through dance, through stories and through watching the actions and behaviours of the adults in the community. All the time, the child was asked to work out the messages contained in what they were hearing and seeing as well as what they learnt from the experience.

During this learning process the child was allowed to make mistakes and the adult’s role was to teach the child what was right and wrong, not to punish them for being wrong. In fact, in traditional communities children were never afraid to be wrong because they knew they could trust their parents, teachers, and the community to keep them safe. Under traditional law, the most disrespect was brought upon a community if a child was hurt and the punishment was severe for the person causing the hurt. As such, children knew that their traditional law would protect them”.

Aboriginal communities, more than any other are aware of the many values that they have lost in the process of colonisation and adoption of norms external to their values. However, we are fortunate we have Aboriginal Elders still amongst us, to show us the way we too can be in our families, to fulfil the meaning of the words: “Children are sacred.” I commend these words to you as this is a profound statement that values the intrinsic and inalienable human rights of children. They encapsulate the principles in the Convention on the Rights of the Child on which the *Children, Young Persons and their Families Act 1997* is based. I respectfully suggest we acknowledge, respect and recognise the value of children, by doing our utmost to put their needs first, before ours at all time, and as adult family members and service providers, accept the need for humane governance in all our dealings with children. If we fail to do so, we will repeat our past mistakes and not improve the human condition of our children by improvements in service delivery to them.

## **PART 1. INTRODUCTION**

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I would like to commence this Annual Report by observing that there has been a steady acknowledgement of the needs of the children and young people of Tasmania, on much that I have increased public awareness of, in the areas of health, welfare, care, protection, and development. This is most satisfactory and I respectfully acknowledge this. The measure of support for all that has been advocated for, has been reflected in the increased budget allocation to the Division of Children and Families in five key areas of concern that I have highlighted in previous Annual Reports to Parliament and Monthly Reports presented around Tasmania. I am encouraged by the response of an increased budgetary allocation for children and young people, as this confirms the continued commitment of the Government to children. The five areas where significant funding has been increased are as follows:-

- Establishing of an administrative system to monitor children in care called “Looking After Children”;
- An increase in the budget to Ashley so that we can also provide residents with treatment and rehabilitation options;
- An increase in child protection workers for “unallocated” cases that need attention;
- An increase in funding to the Foster care sector;
- An increase in funding for accommodation for homeless adolescents.

Of course, all these were done by individual submissions from those who received the increase, with efficient business plans proposed, but continued advocacy in my Monthly Reports, and detailed submission to the Treasury and the Tasmania Together Board last year (see my website [www.childcomm.tas.gov.au](http://www.childcomm.tas.gov.au) for these submissions), strongly supported all such proposals. I have described this process that this Office engages in, as “adding value” to the needs expressed by others, or providing “more muscle” for issues related to children and young people and families in Tasmania. This modest success for children and young people also reflects a recognition of the role that a Commissioner can play to highlight what needs to be achieved for children and how abuse and neglect they suffer in Tasmania can be reduced.

Having come this far, the challenge for the Government now is to extend this assistance to services that assist children and families at points where their difficulties surface. This means implementing the Act and the obligations of the Minister to support families where there are children, and to deal with problems early, without waiting for an emergency to occur first before that child is given priority. To do this we know we need to put the best interests of children first by strengthening and supporting families to encourage parenting that values children. This is also up to all of us, as the Act also places a responsibility on all adults in Tasmania to take steps to prevent child abuse and neglect.

In any discussion on what needs to be done we must be aware of what the obligations are of Government under the *Children, Young Persons and their Families Act 1997*. Many debates of the day refer to social capital which is the wellspring of goodwill in a community, and Tasmania can rightly be proud of an abundance of this valuable asset when we examine the efforts that produced this Act. However, to maintain the trust and respect of this community that worked so hard for this new Act, we need to deliver what the Act is expected to achieve. The Act aimed for a better and more enlightened system of caring and protecting our children that would reduce abuse and neglect. With hindsight, it is no wonder that all the elements of what we now call “civil society”, came together for the purpose of drawing up this Act, and advocating for its proclamation. It must have reflected a concern about the past hidden issues of abuse and neglect that are only now beginning to emerge into the public domain. A crisis of confidence threatens our most cherished institutions, but we now have an Act that allows us to deal with present abuses that the old system denied and dismissed. Now notifications are mandatory but we have a system where investigation and protection needs to be effective.

We are all now bound by legal obligations or statutory responsibilities to report or takes steps to prevent abuse and neglect of children. We have a system that requires that we do not leave children to fend for themselves or to deal alone with their disclosures of abuse and pain. The Act no longer tolerates a situation where the system silences children, and their abusers are instead supported and protected. However, we are still on a journey towards the effective protection of children, as although the obligations in the Act are prescribed, concerns still remain about children at risk whose needs are not being adequately addressed in the present system of child protection. The broad spectrum of expectations the community has and the obligations of Government to prevent the abuses of the past happening again, are established in the Act, and must be a guide in all service delivery to children, to ensure we do not perpetuate the past mistakes or minimise present abuse.

## **1.2 THE OBLIGATIONS OF GOVERNMENT**

Under section 7 of the Act, the Minister can take steps to set up child protection structures to prevent child abuse and neglect and further the object of the Act. The Act states as follows:

“7. (1) The object of this Act is to provide for the care and protection of children in a manner that maximises a child's opportunity to grow up in a safe and stable environment and to reach his or her full potential.

(2) The Minister must seek to further the object of this Act and, to that end, should endeavour –

(a) to promote, and assist in the development of, a partnership approach between the Government, local government, non-Government agencies and families in taking responsibility for and dealing with the problem of child abuse and neglect; and

(b) to promote and assist in the development of coordinated strategies for dealing with the problem of child abuse and neglect; and

(c) to provide, or assist in the provision of, services for dealing with the problem of child abuse and neglect and for the care and protection of children; and

(d) to provide, or assist in the provision of, preventative and support services directed towards strengthening and supporting families and reducing the incidence of child abuse and neglect; and

(e) to assist recognised Aboriginal organisations to establish and provide preventative and support services directed towards strengthening and supporting families and reducing the incidence of child abuse and neglect within the Aboriginal community; and

(f) to provide, or assist in the provision of, information or education services for guardians, prospective guardians and other members of the community in relation to the developmental, social and safety requirements of children; and

(g) to provide, or assist in the provision of, education to persons who are required to notify the Secretary if they know or reasonably believe or suspect that a child is being, or is likely to be, abused or neglected; and

(h) to provide, or assist in the provision of, services to help persons who have been under the guardianship or in the custody of the Secretary during childhood to make a successful transition to adulthood; and



- (i) to collect and publish relevant data or statistics or to assist in their collection or publication; and
- (j) to promote, encourage and undertake research into child abuse and neglect; and
- (k) to encourage the provision, by educational institutions, of courses offering instruction about child abuse and neglect and its prevention and treatment; and
- (l) generally to do such other things which the Minister believes will further the object of this Act.

We note that Parliament had high expectations with respect to what we should be able to do to prevent child abuse and neglect, and we need to ensure that this happens. Implementation depends on adequate services and funding that can fulfil these expectations. The rest of this Report will indicate what this Office has achieved this year, in accordance with the performance indicators for this Office that have been established under the Act, with respect to the functions of the Commissioner under the *Children, Young Persons and their Families Act 1997*.

## **PART II PERFORMANCE INDICATORS**

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### **2. PERFORMANCE OF COMMISSIONER BASED ON FUNCTIONS IN THE CHILDREN, YOUNG PERSONS & THEIR FAMILIES ACT 1997**

Under section 83 of the Act, within three months after the end of each financial year, the Commissioner must provide a report on the performance and exercise of the Commissioner's functions and powers during that financial year to the Minister and Secretary.

The functions of the Commissioner under the *Children, Young Persons & Their Families Act 1997* (the Act), include:

- to encourage the development, within the Department [of Health & Human Services], of policies and services designed to promote the health, welfare, care, protection and development of children – under section 79(1)(b);
- to increase public awareness of matters relating to the health, welfare, care, protection and development of children – under section 79(1)(d);
- to advise the Minister on any matter relating to the administration of this Act and the policies and practices of the Department [of Health & Human Services], another Government department or any other person which affect the health, welfare, care, protection and development of children – under section 79(1)(e);
- to advise the Minister any matter relating to the health, welfare, education, care, protection and development of children placed in the custody, or under the guardianship, of the Secretary (of the Department of Health & Human Services) under the *Children, Young Persons & Their Families Act 1997*, or any other Act – under section 79(1)(f).

Under section 80 of the Act the powers of the Commissioner is allowed to:-

- Do all things necessary and convenient to be done in connection with the performance and exercise of his or her functions and powers under this or any other Act.
- This includes the power to require any person to answer questions or produce

documents so far as may be relevant to the administration of the Act.

I have had no problems in exercising these powers to date, but envisage I may well have in the future, so in any review of the Act should consider some form of encouragement, if not penalty for non supply of information or documentation.

## **2.1 EVALUATION OF THIS OFFICE AND THE WORK OF THE COMMISSIONER**

This year we have continued with our practice of sending Evaluation Forms out with our Monthly Reports. This allows everyone, from Members of Parliament to members of the community, to comment on the work of this Office. The public is given an opportunity to comment on the performance of the Commissioner and this enables us to monitor our performance on a constant basis. These have not revealed any concerns, but have instead indicated a strong acceptance and acknowledgement of our work and activities.

## **2.2 ESTABLISHED MODEL OF THIS OFFICE**

Parliament also was very clear on how a Commissioner was to exercise the functions given under the Act, as under section 79 (3) it is stated that :-

*“ In performing his or her functions, the Commissioner must act independently, impartially and in the public interest. ”*

After two years and eight months of holding office, it is the belief of my Advisory Council that we have managed to establish this Office as an independent and impartial one. We have also demonstrated that it is an Office that is not governed by political or bureaucratic priorities, but the public interest. The integrity of this approach has also been acknowledged, as it allows for a promotion of the health, welfare, care, protection and development of children in the public interest.

In my first Annual Report presented to the Minister and Parliament, I referred to the human rights principles that this Office had been built on which had been established in the *Children, Young Person's and their Families Act 1997*. There were no queries made about this human rights base, either from members of Parliament or from the former Minister. The Joint Parliamentary Committee had clearly stated in their Report to Parliament, that the Act was based on the *Convention of the Rights of the Child*. This foundation that I built on, accurately reflected the manner in which Parliament had envisaged this Office should function. This human rights base was a departure from the approach that had been adopted by the Department of Health and Human Services, in their earlier administrative guidelines. These guidelines were produced by the Department before I took Office and had a completely different vision for this Office to mine. I wrote about the “conception” and difficult “birth” of this Office in one of my earliest publications called “ The History of this Office”, which is on my website. If you read it, you will see that initially this was a highly charged Office politically, moving from the Department of Health and Human Services to the Department of Justice and then back again to the Department of Health and Human Services. It's exact role was also not clear when it initially existed within the Department of Health and Human Services (the Department). Prior to proclamation in July 2001, the role of the Commissioner as envisaged by the Parliamentary Committee, was not being properly implemented. This meant that one of my first tasks as Commissioner was to make sure that the Office functioned as Parliament intended it to. I also established its independence from the Department to allow it to develop into being the kind of Office that you now have. I have continued to promote this independence and impartiality as this is expressly stated in the Act and is precisely what not only Parliament intended, but the public expected. It is this very role and responsibility that the Government states they now wish to review.

There is no doubt that the Act needs to be reviewed, but this needs to be done with full consultation with the community. Since October 2000 this Office, has been steered towards a more appropriate advisory role, that is far more in keeping with the Act than it was before, so any review of the role and responsibilities of the Commissioner needs to be properly justified to the community. My initial Reports on the endeavours of this Office were to the community in the Monthly Reports I commenced in November 2000, one month after I assumed Office. My next Reports were to Parliament on the Implementation of the Act and then from this financial year, I have reported to the Minister on a regular basis. That is how this Office has evolved. These Memoranda of Advice given to the Minister from 2002, have been based on a scrutiny of systems issues and how they need to be addressed and remedied in accordance with specific provisions in the Act.

The Memoranda by and large expanded on and added to the ten Reports I produced for Parliament last year. These Memoranda continued to increase public awareness of issues that need resolving. They are driven by the public interest and not political or bureaucratic priorities. They reflect on how the best interests of the child can be properly implemented in all services, practices and policies provided by the Government. It is a requirement of the Act that in any exercise of powers under it, the best interests of the child must be the paramount consideration, so this is a legitimate expectation that the community is entitled to have.

This non-political and non Departmental position that allows a Commissioner to act in the public interest must be preserved, when we review the Act. Anything less would subject this Office to the risk it was exposed to in the past, with respect to differences of opinion on how it was to operate. When the legislation was first passed, the Office moved from one Agency with little understanding and many difficulties based on what its exact role was, to another where I understand it was not welcomed. Most importantly of all, the exact role of the Office was in dispute, and this must not be allowed to occur again, now that it has been successfully established on human rights principles under the Act.

### **2.3 COMMUNITY RESPONSE TO THIS MODEL OF OFFICE**

The position adopted by this Office has been well accepted judging by the responses I have received from Parliament, Government and non Government agencies, although there have been some who have strongly disagreed with the issues raised. This is inevitable and I welcome it as part of the healthy debate that we need to have about how we can best help our children by properly implementing the object of the Act. This debate is particularly appropriate in issues like my campaign to repeal the defence of domestic discipline. This law provides parents and carers with a defence when they hit their children. There have been predictable tensions from a significant section of the public to my campaign to repeal the defence of domestic discipline, but the situation is evolving.

There appears to be less of an objection to my campaign to encourage alternative forms of discipline of children. Alternatives that do not involve hitting them have been received with much interest and this is very encouraging, as it reflects a desire for up to date expert information and advice. Such information appears to have been lacking in Tasmania before, and under the circumstances it is my function to increase public awareness of alternatives to hitting. Parents would welcome parenting methods that could have a greater positive impact on the health, welfare, care, protection and development issues for their children. This new information challenges received wisdom, but the community has been open minded and ready for this guidance, especially as this Government has already repealed physical punishment in schools in 1999.

## **2.4 AGENCY RESPONSE TO THIS OFFICE**

By and large every single agency we have scrutinised, has been cooperative, even if they have not agreed with my views. This is true even with the Division of Children and Families and the widespread acceptance must not isolate the very small numbers who are resistant to change. A few are finding the climate of change extremely difficult to accept and I recognise the need to manage their anxieties. Their concerns are also inevitable, but the tides of change that demand a more satisfactory system of child protection, will continue despite any misgivings within this small section who may have their own priorities. Parliament and the community demands such change and this small section must try not to impede the process that has started. What are seen as advantages to the general community may be seen as disadvantages to them. One reason for this could be that they are finding it difficult to adapt to a system where they now need to be more transparent and accountable in their processes.

It is likely that they will experience great difficulty with the fact that this Office, through the Commissioner, can now have a direct link to the Minister. This means that the community too now has this direct link to the Minister through this Office. This community participation in the functions of the Commissioner, is valued very much by parents, children, families and their workers. The model that has been established allows for a direct conduit of advice to the Minister and this is unprecedented in Tasmania. It is my belief that this function has impacted positively on all Tasmanians. The degree of transparency and accountability to the Minister, Parliament and the community could well be a challenging precedent for bureaucracy. This high level of contact and communication that has been created by this Office, despite misgivings of those who will only be able to see these advances within a limited perspective of criticism rather than the birth of a system that allows for constructive comment on services to children, young people and families. Such advocacy and advice is necessary if we sincerely seek to have an improvement in the lives of children, young people and their families, by a reduction of abuse and neglect. Some anxiety is understandable and that is why Parliament gave all whom I comment on adversely, the right to respond and to refute what I have said. This should assuage those who have concerns.

## **2.5 CONTINUED ROLE OF THIS OFFICE**

In any interpretation or review of the role and responsibilities of this Office, I am concerned to ensure that we remain with what one of my Advisors has termed the “moral maximum” on how we should help children, and how this Office should operate. Alternatively if we rely on the support of arguments based on the “legal minimum”, this will give as restricted a meaning as possible to issues related to the health, welfare, care protection and development of children. The former seeks to benefit children as extensively as possible, whilst the latter endeavours to be only as responsive as budgetary constraints allow. Unfortunately, there is still a tendency to do this, but I will continue with my advocacy that actively discourages this minimalist approach. It is not in the best interests of children, nor is it in the public interest.

To promote this concept, I have submitted an amended Protocol that describes the present relationship of this Office with the Department of Health and Human Services. We have been working extremely well within this Protocol and with the model of this Office that has been developed, and as such I see no reason whatsoever to tamper with it. If it is to be changed, we need to receive clear reasons for it, from those who wish to change it, as this is the very least we can expect with the successes that this Office has achieved to date. The strengths of this Office must be maintained, to preserve the valuable role created by Parliament, that allows a Commissioner to act in the public interest and not within the narrow confines of bureaucratic or political priorities. These latter priorities may not always have the best interests of children in mind but may instead emphasise costs or other constraints, that could inhibit the best interests of the child.

## **2.6 JURISDICTION OF THIS OFFICE**

In the early days it was not unusual for the jurisdiction of this Office to be challenged, and far from being concerned with such apparent obstacles, I welcomed it as a need to clarify issues, concerns and misconceptions. I dealt with them and resolved all such queries, as it was important to do so and establish the worth and value of this Office. I had contact with the Department of Justice when they sought to clarify my jurisdiction to report to the Minister on strip searches in Risdon Prison, and I also established what the parameters of my jurisdiction were with the Director of Public Prosecutions when I reported to the Minister on Police conduct in Ashley. Interestingly Tasmania Police have always cooperated fully with all our processes, despite inevitable earlier differences with respect to the *Forensic Procedures Act 2000*. The Department of Education too, have always worked very well with this Office as I believe they were the first to realize how we could work together to benefit children, young people and families in this State. They too have come a long way from the early days when I had to oppose the first *Child Care Bill* in 2000 that was withdrawn from Parliament, after the expression of strong community reservations. In addition, since the new Director of the Division of Children and Families was appointed last year, there has been a very high degree of collaboration that allowed this Office to operate at its high productivity level to date.

However, the Federal Government continues to dispute the jurisdiction of this Office, in matters that impact on the children and young people of Tasmania. I have pressed on despite this dispute in jurisdiction, and provided Memoranda of Advice to the Minister instead. By this strategy I have left it up to him, so that he can take up the matters I have advised him on with his Federal counterparts. This has proved a successful strategy, to the extent that we are now having our local Tasmanian issues about children being brought to the attention of the Commonwealth Government by an independent appraisal of the situation, seen from the perspective not only of our Act, but the United Nations Convention of the Rights of the Child that the Commonwealth Government is bound by. This augurs very well for the model of this Office that has been established both in this State and with the Commonwealth Government.

## **2.7 ESTABLISHMENT OF DIRECT COMMUNITY LINKS**

I have endeavoured to establish strong community links and this too has been entrenched over the last two and a half years. As there was no guarantee of a continuation of my personal appointment to this Office under my Terms of Appointment by the Governor, I embarked on a strategy of making this Office maximally effective in its first term. I have addressed priority issues so that they can be discussed and resolved as early as possible. I asked the community to inform me of their issues of concern and after receiving an outpouring of such issues, was able to classify and prioritise them, prior to an analysis and assessment of the most urgent ones. I received sufficient information from the community, to produce the ten Reports that I did to Parliament last year on the Implementation of the Act, with minimal input from the then Director of the Division of Child Youth and Family Support. It was necessary to “hit the ground running” as there was a lot I wanted to accomplish in the first Term, and thanks to the high levels of cooperation received from the community, this was made possible. This year, thanks to the high level of cooperation received from the present Director of Children and Families, I have produced 27 Memoranda of Advice and submissions to the Minister and to the State and Commonwealth Governments and agencies.

In addition, I have been to all 29 Local Council districts in this State and established links with them, the Aboriginal Community, Foster Parents, the Youth sector and many Community agencies assisting parents as well like NAPCAN, Family Support Services of Tasmania, Anglicare, Colony 47 and Centacare workers as well as Good Beginnings in all areas of the State.

### **2.8 (a) ESTABLISHMENT OF STATE WIDE LINKS**

A role much appreciated by the community was the establishment of a state wide system of contact and liaison for children, young people and families in a manner that has not happened before. In particular, the latest links established enable me to advocate for the Aboriginal communities and I have had meetings with them state wide to begin to explore issues of family violence and child abuse. At meetings with one such Aboriginal group, I launched my policy recommendation on the Zero Tolerance of Physical and Sexual Assault. I continued with a variety of state wide meetings, consultations and launches, including my Monthly Report Launches that have now covered all 29 Council municipalities in Tasmania.

### **2.8 (b) NATIONAL LINKS**

I met Dr Fiona Stanley at the “Our Kids” Conference in August 2002. It is well known that she was named the Australian of the Year in January 2003 and has established the Australian Research Alliance for Children and Youth. She kindly invited this Office to become a member of the Alliance and accepted our membership. We are also linked to her website [www.aracy.org.au/publications.htm](http://www.aracy.org.au/publications.htm), on which she also has my paper titled: Investment in Today's Children - Growth for Tomorrow's Economy. As a member, the Alliance has asked that we let them have all copies of our newsletters, so this is another organisation on our ever expanding list for Monthly Reports etc. now.

Over the year we have had the following distinguished interstate visitors to assist me with my role as follows:-

- Chief Justice of the Family Court, A.Nicholson to announce prize winners of my banning Physical Punishment Competition;
- Professor of Paediatric Medicine at the University of Newcastle and President of NIFTEY (National Investment In the Early Years ), Australia to launch EPOCH (End Physical Punishment Of Children ) Tasmania;
- Dr Sev Odzowski to speak for the law reform to repeal the defence that allows parents to hit children;
- Dr Freda Briggs on strategies to deal with child abuse;
- Dr Victor Nossar to speak about the value of population based early childhood and public health services to improve the health and wellbeing of children.

The last two visitors spoke at the Asia Pacific Commissioners for Children Conference that was held in June 2003. The other Commissioner’s requested that our annual meeting for Commissioners be held in Tasmania in 2003 and we successfully met in June this year. The Conference was a great success, as we had many distinguished speakers from Tasmania to inform us of what we were doing here and from interstate, about all the possibilities that we could aim for as Commissioners in our respective jurisdictions.

### **2.9. COMMONWEALTH LINKS**

In addition, from the list of submissions we have made, you will note that the Commonwealth Senate Committee of Inquiry now routinely asks for our Submission on all matters related to children. As all of these issues can and do impact on children in Tasmania, I respond to their Inquiries, as comprehensively as time permits. In addition, some community organizations provide us with their concerns and also seek our input and assistance in the form of submissions. All this augurs well for the successful future of this Office, and although the Minister has acknowledged the successful establishment of this Office in Tasmania, we still have a long way to go yet in dealing with the issues raised. As well as this, we need to ensure that the long term stability, sustainability, independence and viability of this Office with its high level of operational efficiencies, is maintained.

## **2.10 INTERNATIONAL LINKS**

We have also established national and international links based on the personal contacts I had prior to my appointment here. I presented a paper in New Zealand, and have had other Papers accepted and presented interstate. The latest is an invitation to a United Nations sponsored South Pacific Workshop on Energy and Sustainability, to inform them how we can factor in children's rights in this debate. This Office receives requests to speak and present at other international conferences, but is constrained from attendance by our Budget. I have had to refuse invitations on this basis and this is to be regretted, as we need to inform the international community of just how well this Office has been established, and how our campaign about banning physical discipline is progressing. Our budget prevents us from attending too far away, unless our expenses are met and this happens at times, and is also a measure of the support we receive internationally. However, the internet is a valuable method of keeping in contact, and we are part of the Global Movement for Children that was founded by non government organisations involved with the United Nations. As such, we are being regularly contacted by international visitors to our site.

## **2.11 DIRECT LINK TO PARENTS**

However, one of the most successful links has been the one to parents. At the suggestion of one of my Advisors, we have commenced a Parents' Page on our Website with details that Parents may be interested in, that are referred to in our Monthly Reports. A one Page summary of my Monthly Reports for Parents is sent to every single State school in Tasmania. Many schools print out the one page Parents summary and send it home with the children to their parents. In my travels around Tasmania, I have been delighted to see how many parents this is reaching. Anecdotal evidence is that parents find it useful, as no one before has reached out to them in such a direct manner.

## **2.12 ADVOCACY ON HEALTH, WELFARE, CARE, PROTECTION AND DEVELOPMENT OF CHILDREN**

These and many other issues we have advocated for have increased public awareness of how adult behaviour can impact on the health, welfare, care, protection and development of children. In my advocacy I have also been able to indicate what steps can be taken, and how I can monitor what progress is being made to address the concerns raised.

## **2.13 ESTABLISHMENT OF THREE DAYS FOR CHILDREN AND YOUNG PEOPLE**

### **a. International Day of Youth for Homeless Children and Young People**

On 12<sup>th</sup> August each year, we have a celebration State wide for all young people. This last year we had successful celebrations only in Hobart and Launceston, but in the next financial year I will be extending it to all regions. The commitment of local youth workers, youth agencies and young people in collaboration on this day has produced some remarkable results. Young people have participated to a high degree and believed in and appreciated the recognition of having a specific day dedicated to the most marginalised amongst them. Having an internationally recognised day for celebrating the achievements of such children and young people is a novel idea that both workers and clients have responded positively to. This day is also an opportunity to recognise and address their specific needs, and how we can look at addressing them. Our focus has been on reaching as many homeless and at risk young people as possible, and share with them information about agencies and services that are available should they need them. Information about the rights of such young people needs to be accessible by them, to be meaningful for them.

#### b. International No Smacking Day

From 30<sup>th</sup> April this year we have commenced to develop a State wide No Smacking Day, that promotes alternatives to physical punishment of children, and raising the public awareness of the human rights of the child. This year was our very first year, and we have had a significant amount of success in the form of contact and congratulations from many in this State, national and international organisations. I also heard that various organisations, like the Australian Early Childhood Association, have circulated this idea to their networks world wide. I have no doubt that others too would have picked up our No Smacking Day as I am aware that publications went state wide too through membership emails.

#### c. International Day for the Prevention of Child Abuse: November 19<sup>th</sup>

We commenced recognition of this day by having a “Breakfast for Bureaucrats” on 19<sup>th</sup> November 2002. We were pleased to have been able to host a breakfast meeting with the Director of the Division, the Secretary of the Department of Health, as well as staff from this Office and the Division. We plan another this year, but this year it will be “Breakfast for Workers” to acknowledge their contribution in the prevention of child abuse and neglect. On this day we will deliver up to date information to them, of what this Office is doing, with respect to increasing public awareness of the obligations they have as well, to prevent child abuse under our Act.

### **2.14 OTHER ASPECTS OF ADVOCACY FOR CHILDREN**

#### (a) Establishment of Advisory Council

The Advisory Councils were established in early 2001 and I have held regular meetings with my Advisory Council in each of the three regions of Tasmania, (South, North and North West). I rotate my Meetings with each Council so that I meet with one Council per month and rotate the regions so that I can get to the Westcoast and Burnie at least once a year. I have held meetings in January each year in Burnie, and invite people from the West, or those who service the west coast to these. In the West Coast location the meetings are held when it is possible and I am in the region. The Councils consist of workers and professionals in the government and non government sector, who advise me on issues of concern in their local region. I value their expertise and the commitment that they continue to display, with no payment, as we are unable with our Budget to sustain any payment.

#### (b) Establishment of Consultative Council

The Commissioner for Children Consultative Councils were also established in 2001 and consist of members from government and private schools, both religious based schools and state schools. Members of the Council range in age and there is a balance in the distribution of male and female members. Like the Adult Council, members meet in each of the three regions and in addition, we have activities once per year so that all regions can be together. I continue to factor in their input in to my Memo of Advice to the Minister.

I owe both Councils a huge debt of gratitude for their unfailing support and determination to progress children’s issues.

#### (c) Advocacy on children’s rights

This Office has had a strong platform from which to promote children’s perspectives, that is their rights and interests in issues that affect them. With strong community support, we have looked at issues that did not in the past fully articulate the position of children in the Submissions and Memoranda of Advice provided to the Minister and other agencies this year.

#### (d) Brochures for children produced this year



We produced some Brochures that my initial consultation with children stated were priority areas and this year we have continued with this and produced the following in collaboration with EPOCH Tasmania:

Brochures on children's rights to be safe at home EPOCH Tasmania Brochures:

- Five good reasons not to smack children,
- Five good reasons why the law that allows smacking needs to be changed,
- Five good reasons why parents do not need to fear law change about smacking children.

Brochures with suggestions of Tasmanian children on Alternatives to Hitting:

- Choose to Hug, Not Hit Brochure

(e) Policy Recommendations regarding the health, welfare, care protection and development of children

Rights of children

- Youth Policy,
- Children's Policy,
- Policy Recommendation on Zero Tolerance for Physical & Sexual Abuse,
- Policy on Screening of Those Who Work With Children,
- Policy on Physical Punishment in Homes,
- Statutory Responsibility of All Adults to Prevent Abuse and Neglect under the *Children, Young Persons and their Families Act 1997*.

(f) Articles from June 2002 – June 2003

The following is a list of Articles written by me this year.

- Investment in Today's Children – Growth for Tomorrow's Economy, August 2002, Our Kids Conference.
- Human Rights Role of Commissioner for Children  
The Promotion of the Human Rights of the Child in Tasmania  
August 2002 New Zealand.
- Family Violence and Crimes Against Children  
Crime Prevention: Family Violence in the Physical Punishment of Children, Crime Prevention Conference, Sydney September 12<sup>th</sup> 2002.
- Beyond the Rhetoric: Community Responsibilities in Early Childhood Intervention, The role of the Commissioner for Children in Tasmania with respect to advocacy for early childhood services in health, welfare, care, protection and development, Paper for the Early Childhood Intervention Australia Conference; September 29<sup>th</sup>, 2002, Hobart.
- Joined up Services for Children An Integrated collaborative approach for dealing with young offenders,  
Paper presented at the Joined Up Services: Linking Together for Children and Families Conference, 26-28 June 2003, Dunedin, New Zealand.

**(g) List of Submissions to both State and Federal Agencies**

July 2002

- Submission to Family Court on Draft Guidelines for Child Representation

#### August 2002

- Submission to Tasmania Police on Tasmania Police – Children & Young People Policy and Framework

#### October 2002

- Submission to Community Affairs References Committee on Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002
- Initial Submission to the State Budget Consultative Process 2002/03
- Initial Submission to the Tasmania Together Board and the State Budget Consultative Process 2002-03
- Submission to the Department of Health & Human Services Training Advisory Board
- Initial submission to Senate Legal and Constitutional Committee Inquiry on Progress Towards National Reconciliation

#### November 2002

- Submission to Shadow Minister for Children & Youth on Federal Commissioner for Children
- Further Submission to Senate Legal and Constitutional Committee Inquiry on Progress Towards National Reconciliation
- Submission on ASIO Terrorism Bill
- Submission to State Senate Inquiry on Issues for Custodial Grandparents

#### December 2002

- Submission on Australian's draft 2<sup>nd</sup> and 3<sup>rd</sup> combined report under the Convention on the Rights of the Child
- Submission to the Tasmania Law Reform Institute on the Physical Punishment of Children

#### January 2003

- Submission on Tasmanian Government Policy Statement and Guidelines for the Establishment and Implementation of Closed Circuit Television (CCTV) in Public Surveillance Policy
- Submission to the Tasmania Law Reform Institute on Defence of Provocation and the Defence of Domestic Discipline

#### February 2003

- Further Submission to the Tasmania Law Reform Institute on Physical Punishment of Children

#### March 2003

- Submission to the Tasmania Law Reform Institute on Same Sex Adoption
- Submission re Caffeine
- The Senate Community Affairs References Committee Inquiry Into Poverty In Australia

#### May 2003

- Submission to Commonwealth Task Force on Child Development, Health and Wellbeing and the Proposed National Agenda for Early Childhood

#### June 2003

- Submission on Impact of Mining Industry work practices on children, families and the community on the West Coast of Tasmania

- Submission to Commonwealth Department of Family and Community Services with respect to support of funding submission for Child and Maternal health Project by West Coast Community and Health Service

### **PART III YOUTH JUSTICE ACT**

When the position was advertised for a Commissioner for Children in 2000, there was no mention of the role that a Commissioner could play under the Youth Justice Act, although the object of the Act applies to all children.

#### **3.1 JURISDICTION**

However, it is apparent on a reading of the functions of the Commissioner, that the Commissioner has jurisdiction over all children that are subject to the custody of the Secretary of the Department of Health and Human Services. The care and protection of all children and young people is governed by the *Children, Young Persons and Their Families Act 1997*. Under sections 79 (1) (f) the Commissioner's role extends to children who are in the custody of the Secretary "under this or any other Act", and therefore applies to residents at Ashley for whom the Secretary has safe custody.

In addition, under section 124(1), the Secretary is responsible for the "safe custody" of detainees:

124. (1) The Secretary is responsible for the security and management of detention centres and the safe custody and wellbeing of detainees.

Youth detention centres are to be managed in accordance with Part 6 of the *Youth Justice Act 1997*. Provisions under this Part relate to the establishment and management of detention centres, admission to detention centres, the treatment of detainees, complaints procedures for detainees and offences relating to detention. My reading of the Act indicates that I can scrutinise practices and policies in detention centres and advise the Minister on them. This has not been disputed.

#### **3.2 SPECIFIC ISSUES UNDER YOUTH JUSTICE ACT 1997**

##### **3.2.a ASHLEY OR ASHLEY YOUTH DETENTION CENTRE**

In 2001, my Consultative Council of children and young people asked if we could drop the word "Detention" from the phrase Ashley Youth Detention Centre. They were of the view that the word "detention" had become notorious and we would need to distance ourselves from all that has been associated with this and I have taken this on board, although there was strong objection to this from the former Director of the Division. I will use the word "Ashley" in all my references to that Centre in this Annual Report.

##### **3.2.b. REGULAR MONTHLY VISITS TO ASHLEY**

I commenced regular monthly visits to Ashley in this financial year, and have reported on my visits in my regular Monthly reports presented to the public. By and large I have chronicled a growing improvement in Ashley, both in terms of the living conditions of the residents and the services offered to them with respect to their rehabilitation and treatment. A great improvement was achieved, with the recruitment of the new manager of Ashley. He brought with him a more enlightened management style and focus that was much more in keeping with the *Children Young Persons and their Families Act 1997* as well as the *Youth Justice Act 1997*. In addition, as a result of my visits to Ashley and my Memoranda of Advice to the Minister, the Minister has initiated changes. I was concerned about the Standard Operating procedures, and these have now all been recalled and new ones are to be formulated. Other

changes and improvements have also occurred that I have referred to in my Monthly Reports and they include situations now where:

- a. girls are being separately housed to boys;
- b. bullying of residents is no longer tolerated by staff;
- c. new entrants are selected for housing in accordance with their age;
- d. case plans, and exit plans have commenced;
- e. medical issues are more easily addressed with a resident nurse now employed by Ashley;
- f. attendance at Ashley school is seen as a right and not a privilege;
- g. training opportunities, and VET Programs are more easily accessible for residents;
- h. extra funding for services at Ashley has been proposed in the May 2003 Budget;
- i. treatment and rehabilitation options are being provided;
- j. all standard operating procedures have been recalled, to be re-written to be compliant with the law and international conventions;
- k. staff are being progressively skilled up by nationally accredited training courses.

The most remarkable has been a change in culture, from one that had a focus mainly on punishment and containment to one that acknowledges the obligations in the legislation for rehabilitation as well as treatment.

Some changes that have been proposed are as follows:

- a. Liaison with Magistrates Courts to ensure that remands are appropriate;
- b. Liaison with Courts so that cases are heard earlier;
- c. Reduction of the numbers on Remand at Ashley.
- d. White Lion Mentor Program to prevent recidivism.

The first three have still not been addressed but are set for October or November this year.

Some of the difficulties that still exist which need to be addressed:-

- The full implementation of the Aboriginal deaths in custody recommendations for children and young people who self identify as Aboriginals;
- A greater role for Aboriginal Elders in the juvenile justice system and at Ashley;
- Further Indigenous support for Indigenous young people;
- Increased capacity for managing residents with high and complex needs;
- Reduction of a trend to place them in adult facilities, with the management of these young people at Ashley instead;
- The rights of under 18's being held at adult facilities;
- Dedicated Aboriginal Workers at Ashley;
- Effective Entry and Exit Plans for Ashley;
- Effective links between the youth justice and care and protection system;
- Increased community based options for young people as an alternative to Ashley;
- An alternative residential facility for those with mental health and addiction issues;
- An alternative residential facility to Ashley for those on remand for non prescribed (not serious) offences;
- More community supports for those leaving Ashley;
- Vision and Mission Statement to be established for Ashley;
- The establishment of a Statement of Rights of children and young people at Ashley;
- The Statement of Rights to be included with the rules and responsibilities now given to residents;
- Continuing improvements for training for Ashley Workers; and
- New Ashley Learning Centre to be developed as an alternative to the Ashley school.

With increased funding to Ashley, and the presence of the new manager at Ashley, I hope and have every expectation that these matters can now be progressed satisfactorily.

#### **PART IV RISKS TO OFFICE**

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I am concerned to ensure that in the coming months, in any review of the *Children, Young Persons and their Families Act 1997*, the views of children and young people, the community and the views of my Advisory and Consultative Councils are respected. They are happy with the way the Office is being operated, and any changes that are being proposed will need to accommodate their perceptions and views and not just the views of the Department of Health and Human Services or the “Our Kids Bureau”. If any administrative changes are proposed by way of Regulations that will be passed by Parliament, then this too needs proper consultation with the Commissioner as well as the Advisory and Consultative Councils and the community, which includes children and young people. This is the type of participatory democracy for this Office that I have established, that empowers the community. They must not be disempowered by internal processes that do not factor in their input. It was input from the community that created this Office, with dedicated community activism that was in the public interest. This also accords with best practice and we must continue with this strength. The Office must remain truly the Office for all Tasmanians especially children and young people and those in the community who are dedicated to them.

#### **4.1 CONTINUING RISK FACTORS THAT COMPROMISE THE SURVIVAL OF A RIGHTS MODEL**

In the initial months of my appointment, the process of disentanglement from risk factors also necessitated the dismantling of a flawed ‘complaint’ processes, that sought to duplicate some of the work of the Ombudsman. Originally, it was believed, that the Ombudsman would do the work that Parliament required the Commissioner to do, with one Complaints Officer. This was a flawed concept as the Ombudsman already had powers under the *Ombudsman’s Act 1978* to receive complaints and review decisions made by the Department of Health and Human Services and the Division of Children and Families. There was no necessity to duplicate this, and yet this was what was proposed. Under *the Ombudsman Act* adults could act on behalf of children and the Ombudsman and I agreed on this very early on after my appointment. We also agreed on how we could work together, and what exactly my jurisdiction was. Indeed, the Ombudsman guided this Office in all aspects of the process by which the public could access our services and we have worked on this basis, in collaboration with them since then. We have also looked at the parameters of the Watching Brief Strategy I devised, and how we can work together here too, as that Office has a power in its own motion to look at this strategy as well. Similarly, we have established our parameters with the Anti Discrimination Commission, as at times, we both have issues that also need a referral to the other. The support of the Anti Discrimination Commissioner too has been particularly significant in issues about due process and governance and our endeavours to remain above party politics and work impartially and independently in the public interest. This is the objective we all seek to maintain and this remains the greatest risk factors for all our three Offices. We need to preserve this in the public interest, with support from all quarters in the community. Our respective legislation demands such independence and we have statutory obligations to provide and demonstrate this. None of this must mean that we are performing our duties like a ‘defacto opposition’. Nothing is further from the truth, as we need to comply with our legislation. This is simply as a watchdog function for the public, in the public interest, and is very much part of the democratic process we value greatly as a Common law country that adheres to the Rule of Law.

#### **4.2. BUDGETARY CONSTRAINTS.**

All these outcomes have been achieved with the help of my extremely hard working staff of just two, Gary Yan and Rhonda Anthony. With the very small budget that has been allocated to us, our output is reliant on our human resources much more than our financial resources. I am indebted to them both, as the measure of our performance and our transparency, accessibility and accountability to the people of Tasmania, lies in the way we have worked together as a team. From November 2000 I commenced contact with Ashley, but did not visit it as often as I would have wished. However, stretching my hours of work to the personal limits I could reach, I have commenced monthly visits to Ashley, without an increase in my Budget. This has come at the cost of not being able to have a residential Annual General Meeting for my Consultative Council of Children and Young People and Annual General Meeting of my Advisory Council in the three regions of the State, as well as other valuable activities. In this respect, I would value a review and an increase in our budget, as it is important to extend and maintain this high degree of operational efficiency and credibility that we have earned, by more adequate financial support, to maintain the impetus of this Office, and the confidence of the public that we have gained.

#### **4.5 A REVIEW TO CONSIDER THE RELOCATION OF THE ADMINISTRATION OF THE OFFICE**

As a consequence of the risks referred to above, apparent from the past history of this Office, I have at all times strenuously endeavoured to maintain not only the independence of the Commissioner but also the perception of independence. The administrative process for this Office is reflected by approximately one fifth of our Budget being allocated to Corporate services. We have no breakdown of this allocated costs nor do we have any input at all into what amount our Budget is to be, despite the submission of an Operational Plan and a request for an increase in the 2001 – 2002 budget and another submission for an increase in 2002-2003). We are also expected to share the same budget advisors etc. with the Division of Children and Families. For this financial year, despite being probably the most cost effective and efficient business unit in the entire Department with a very high level of performance, we have received the smallest increase in our budget across the spectrum we have scrutinised. This has been the subject of adverse comment from the community, as it is obvious to them that we are being undervalued within the Department. The members of the Coalition for Children met me when I commenced Office and warned me about having my administration being sited at the Department. However, I was confident I could manage this apparent conflict on interest and preserve the independence of this Office. However, I am spending far too much of my core business hours managing this conflict caused purely by financial and staffing administration issues that are quite unnecessarily lacking in transparency and accountability. I had expected a much higher degree of consultation and cooperation and this has not transpired. This is a real issue now that must be resolved, as it has placed an unacceptable stress on this Office.

Administration for this Office is with the Department we need to scrutinise most, and not with an independent agency, as was the position when this Office was first created. After the Act was passed the administration of this Office was with the Department of Justice. However, I am not advocating for relocation to that Department now, but simply drawing attention to the fact that moving the administration of this Office to the Department of Health and Human Services from the Department of Justice, has not been without community perceptions of a compromise of independence. It has also come at the cost described above, that needs to be reviewed. In any review of the Act, this should be taken into account and a consideration given to moving the site of the administration of this Office to another agency. All other Commissioners in Australia, (i.e both New South Wales and Queensland) have moved them to the Premier's Office and it is my view that this is entirely appropriate to secure public perception of the independence of this Office in this manner. It would also be in keeping with

the whole of government approach I have advocated from my first Annual Report to Parliament in 2001.

The administration for the Queensland Commissioner for Children was moved to the Queensland Premier's Department, after a recommendation made by an inquiry into the abuse of children in Institutions in Queensland. The Forde Inquiry recommended:

“That amendments be made to the Children's Commissioner and Children's Services Appeals Tribunal Act 1996 to ensure the independence of the office of Children's Commissioner, and provisions be made for its attachment for administrative support services to the Premier's Department.”<sup>1</sup>

Given the current concerns about past abuse of children in care, it is inevitable that there will be concerns raised about children who have disclosed abuse or there are allegations about children being abused whilst in care now. Details of this will be in a Memorandum of Advice to the Minister, before the end of my term of appointment. As such, it would be appropriate, if the administration for the Office of the Commissioner for Children is located outside the Department. In Tasmania, this can be done without the need for amendment of the legislation. It will give effect to what members of Parliament have already stated in past Parliamentary sessions where there has been debate over where this Office should be located. It appears that there was unanimous support that it should be independent and located outside the Department. In my respectful view, after nearly three years in Office, I would like to respectfully acknowledge that Parliament was absolutely correct.

#### **4.6 ADMINISTRATIVE CONSTRAINTS**

After nearly three years of having held office, I have reflected on all that has happened and now have the view that if the people of Tasmania are to be secure in this Office, then it would be necessary to consider moving the administration of this Office away from the Department of Health and Human Services. Despite having the burden of a new independent Office many, especially the new Director of the Division of Children and Families, have done their best to rise to the challenge, but it has posed too many conflict of interest issues that continue to increase. As my reporting levels to the Minister increase and advice is given on matters that directly impinge on how the Department works, it is inevitable that tensions will occur and they have. This needs resolution now, as we have a looming problem of addressing the allegations of adults and disclosures of children of abuse in care at present.

### **PART V EMPOWERMENT OF PARENTS AND CARERS**

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#### **5. EMPOWERMENT OF PARENTS AND CARERS**

Early identification and support of children and families is in essence the modus operandi of the new Act. It seeks to support families in accordance with the principle that in any exercise of powers under the Act in relation to a child, the best interests of the child must be the paramount consideration. Pursuant to this, families are to be provided with support and assistance by the State with services set out in section 7(2), that I have stated earlier, to carry out their primary responsibility to the child. The Act clearly sets out these principles which I stated in my first Annual Report.

These principles can be progressed, as there has been an increase in funding as stated in my Introduction, and this in an excellent start to addressing some of the problems I have highlighted. There is now, as the Minister fully understands, a second stage that needs to be

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<sup>1</sup> Forde Commission of Inquiry into Abuse of Children in Queensland Institutions, Forde Inquiry Report, 8 June 1999, 264, <http://www.qld.gov.au/html/fordeinquiry/>

looked at. There is a need to adequately provide services and funding in the community through the government and community sector for a full complement of services to assist children and parents in accordance with the principles established by the Act.

These must include improved:-

- Primary health service delivery to children and parents at home and in the community;
- Early comprehensive supports to at risk children and families;
- Community based assistance and information to parents on positive parenting skills, and their responsibilities in the care and protection of their children;
- Clear affirmation to parents of the crucial and valued role they have in their upbringing of their children, and how they can be supported;
- Provision of ongoing support to children and families who have difficulties, to develop their resiliency and life skills.

These early support services, like adequate information, home visits and community connections, are crucial for the successful implementation of the Act. They are also in keeping with the stated objectives of the 'Our Kids' Strategic Policy framework and the one object of the Act.

## **PART VI INTERACTION WITH DIVISION OF CHILDREN AND FAMILIES**

### **6. PROGRESS WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

We have continued working collaboratively with the Division of Children and Families and I wish to take this opportunity to thank them for their cooperation. I will begin this section with a general overview of our relationship and how we have progressed with establishing a formal and informal working Protocol of our interaction so far.

#### **6.1 COLLABORATION ON PROTOCOL AND IMPLEMENTATION OF ACT BETWEEN THE DIVISION AND THIS OFFICE**

##### **6.1.1 FORMAL PROTOCOL**

In the Protocol between the Department of Health and Human Services and this Office, the Division proposed in 2001 that they will:

- *Continue to monitor the implementation of the Act;*
- *Provide the Commissioner with the results to date of the Department's monitoring of the implementation; and*
- *Liaise with the Commissioner to assist her in her reporting of the implementation of the Act*

Although we are working generally in accordance with the Protocol, we have still not signed it, and I hope this can be done in the next few months. Our Reports on an Assessment on the Implementation of the Act have been provided to the Division from January 2002, whilst the *Our Kids* Strategy was being developed. Accordingly, the process proposed in the Protocol by the Division can commence now, in the context of the next phase which is the Division's own separate appraisal of the implementation of the Act. The *Our Kid's* Strategic Policy launched last year is only a start, and the Action Plan that is yet to be produced is a perfect opportunity to redress and resolve concerns about the proper implementation of the Act that I presented to Parliament last year. Throughout this year, the Division has received copies of various Memoranda of Advice that I have sent to the Minister. This will be subject of another work plan or action plan that I suggest will run parallel with the action plan I proposed for the Reports made to Parliament last year.



In each of the ten Reports made last year, there were a series of Concerns and Recommendations made. I stated last year that these should be addressed by setting out exactly what the Division would do to implement them within a short time frame, as opposed to their longer term one. This year I propose that outcomes should first be spelt out in a Chart format that could then be actioned by the Division in collaboration with this Office as proposed in the Protocol that has been established between us. We have commenced on this informal action plan in our regular meetings with the Division this year, but next year, I would propose that part of process should be a formal reporting back to this Office on how they are to implement the Recommendations in the context of the object of the Act and the outcomes envisaged in the 'Strategic Policy' framework and the Action Plan to be developed. Although, I acknowledge that some progress has been made in the discussions between this Office and the Division and I look forward to progressing it further with a properly structured Chart as suggested above, so that we can have strategies, time frames and funding timelines set out in it. It would also assist in assessing how much we have achieved.

## **6.2 COLLABORATION ON IMPLEMENTATION OF RECOMMENDATIONS IN REPORTS TO PARLIAMENT**

I set out below, a follow up of the progress of my further contact with the Division of Children and Families on the recommendations I made in ten reports to Parliament that I submitted last year. I wish to point out that what is of significance is that the views expressed in my ten reports have been corroborated by the community consultation undertaken by the Our Kids Bureau. The result of the wide community consultation process undertaken by the bureau confirmed and extended the views expressed in the material I have provided to the Minister and the Department over 2001 and 2002, and in this last financial year 2002-2003. (These latter Memoranda of Advice are attached to this Annual Report and will be referred to in the next section of this Annual Report).

The ten Reports made in 2001 – 2002 are as follows:

	<b>Report</b>	<b>Date Submitted</b>
<b>1</b>	Administrative Instructions & Guidelines on Mandatory Reporting	January 2002
<b>2</b>	Intake & Assessment Processes concerning Children who witness Criminal Assaults at Home	February 2002
<b>3</b>	Children and Young People 'At Risk' of Homelessness or who are Homeless	February 2002
<b>4</b>	Legal Representation of Children ( <i>section 59 CYPFA</i> )	March 2002
<b>5</b>	The Right of Children to Address the Court ( <i>section 56 CYPFA</i> )	March 2002
<b>6</b>	Forensic Procedures Act 2000: Review of One Year in Operation	April 2002
<b>7</b>	Family Group Conferencing: Bottom Lines	May 2002
<b>8</b>	Adjournment of Criminal Proceedings to Resolve Care and Protection Issues ( <i>section 104 YJA &amp; s18 CYPFA</i> )	May 2002
<b>9</b>	Adjournment of Criminal Proceedings to Resolve Mental or Nervous Health Issues ( <i>s105 YJA &amp; s18 CYPFA</i> )	June 2002
<b>10</b>	Responses on Disclosures and Reports of Physical and Sexual Assaults on Children	June 2002

## **6.3 THE NEED TO ADDRESS EXISTING DEFICIENCIES**

The most important aspects of the above Reports were that they identified deficiencies that still existed, which needed to be remedied. I strongly advocated that all these recommendations are followed up and last year I proposed that they be incorporated within

the Action Plan proposed for the *Our Kids* Strategic Policy. As a first step, we need to implement improvements in the child protection system so that it responds not only to children who are being abused and neglected, but to those who are at risk of such abuse and neglect, so responses will need to be more effective and timely. I would like to see an immediate strategy of how these deficiencies are going to be addressed in the Action Plan, as it was not at all apparent in the Strategic Policy. In the earliest Draft of the Action Plan given to me from the bureau, these deficiencies are not properly or effectively addressed. In addition, I have asked for a Charter of Rights for Children in care to be developed and I have no commitment or indication of who is to do this and when. This is simply best practice that should have been accomplished early, so that both the workers and the Division are familiar with the rights of children in care. Apart from this observation, I will not comment on the *Our Kids* Action Plan as it is in its Final Draft stage and it may well incorporate the steps that I have recommended should be taken to remedy such deficiencies, that I have highlighted. Given the commitment of the Director of the Division and the Minister to date, I am encouraged that we will continue to engage with this process of addressing the deficiencies I have highlighted in my ten Reports to Parliament submitted last year.

## **7. PROGRESS REPORT ON HOW RECOMMENDATIONS IN THE 10 REPORTS TO PARLIAMENT ARE BEING ACTIVATED**

### **7.1. ACTION PLAN WITH DIVISION OF CHILDREN AND FAMILIES**

This Office has been in regular contact with the Division of Children and Families and as a result have been able to progress some of the Recommendations we have made as follows.

#### **7.1.2 PART (1) – ADMINISTRATIVE INSTRUCTIONS & GUIDELINES ON MANDATORY REPORTING**

This Report raised concerns regarding the Mandatory Reporting Information Booklet provided by the Division to the community on their responsibilities under the Act. This Office advocated for:

- a more proactive approach and better conformity with the terms, object, principles as well as the spirit of the Act in the information provided by the Division to the community on mandatory reporting;
- the Act to be quoted in the context of protecting children now, not when things become very serious;
- responses made by mandated notifiers to be based on the best interests of the child;

#### **7.1.3 UPDATE**

In response to this Report, in April 2002, the Division informed this Office that:

- they were in the early stages of developing a partnership with TAFE through which a mandated reporter training package is to be developed, which will supersede the mandated reporting training information referred to in our Report.
- Module 1 referred to in our Report was being reviewed given the established of CPARS and a comprehensive Practice Framework for Child & Family Services.

I have also asked for the CPARS Team to draw up a Vision and Mission Statement, as well as Statement or Charter of the Rights of the Child who has been the subject of a notification. I have also requested this of Ashley, as I respectfully suggest this will be a good method of clarifying and crystallizing just what we hope to achieve for children, young people and their families. It will also give all those involved a clear understanding and a focus on what is expected of them, in the context of service delivery to the client which is the child or young person.

#### **7.1.4 FURTHER CONCERNS OF THIS OFFICE**

A previous concern expressed by the community to this Office, that during office hours sometimes the Intake and Assessment telephone would not be attended, and callers asked to speak to a recording machine and leave a message. This was distressing as:

1. It did not allow for confidentiality if a worker was to ring back, as the message bank needs a return telephone number;
2. It did not allow for urgent notifications to be responded to as promptly as was needed.
3. A long wait in the queue encourages attrition.
4. Full details of the child must be given to the first point of contact when the public ring, so the database has this, even when there is attrition, or no return telephone number is given.
5. We asked if it would be possible to have a "call diversion" to a worker instead of the above, so that there can be an immediate response.

I also note that those who have concerns regarding child abuse and neglect have a new number 1300 number to contact. This will make it difficult for those interstate to contact us.

#### **8 PART (2) – INTAKE AND ASSESSMENT IF PROCESSES CONCERNING CHILDREN WHO WITNESS CRIMINAL ASSAULTS AT HOME**

This Report focused on the response of the child protection system to children who witness criminal assaults at home, and examined the administrative instructions provided to workers by the Division. We advocated that in order to properly achieve the object of the Act there needs to be a wider focus to acknowledge the harm to children who witness domestic violence. As Parliament intended, we advocated for the removal of the danger to the child, rather than the removal of the child from the family. To do this, we recommended proactive, coordinated action to be taken between child protection agencies, the Police and the Courts to focus on identification and early action to protect the child.

Also noted with concern in this Report, was the issue of shelters and refuges being expected to accommodate both homeless children and parents, as well as children and their parents escaping criminal assaults at home, with the result that the special needs of children who have witnessed domestic assaults at home are not addressed, or alternatively, are marginalised as simply an issue of the provision of adequate shelter.

#### **8.1 UPDATE**

In March 2002, the Department informed this Office that:

- The preferred options for future directions were integrated in the 'Our Kids' initiatives, including the establishment of a specialist therapeutic service for children, closer integration between domestic violence services system and the child protection system, and community education initiatives;
- Australians Against Child Abuse planned to set up a service in Tasmania, presumably for children;
- The Division had made a submission to the University for an honours student to develop a self-paced learning package on the importance of the early years;
- In May 2002, the Department informed the Office that the Grants and Contracts Department of the Division of Children and Families would supply list of the support services offered to children who enter shelters or who are witnesses of assaults/domestic violence at home.

#### **8.2 FURTHER CONCERNS OF THIS OFFICE**

However, the above do not address the issue of the subsuming of Shelters with Refuges, as the needs of clients can be quite different. The need for security and confidentiality, to name two examples, are vital for those escaping domestic violence.

In addition, our suggestion that utilising the *Criminal Injuries Compensation Act 1976* for counselling services for children, who witness violence appears not to have been progressed by amendment to that legislation etc. We have been given to understand that this is the position in the victims assistance system with respect to counselling services for children who witness criminal assault at home:

#### Victims Assistance Unit (VAU)

Children witnessing criminal assault are considered victims also for purposes of Criminal Injuries Compensation and the VAU is established to provide assistance to victims, particularly with seeking compensation under the legislation. This may include recommendations that compensation awarded includes a component for pain and suffering so that an amount can be released to allow the child counselling with a psychologist. This depends on a case by case basis, but there does not appear to be any specific references to counselling under the Criminal Injuries Compensation legislation. It appears to be up to the Commissioners making the decision.

#### Victims of Crime Service (VoCS)

VAU does not offer counselling services, this is done through the Victims of Crime Services. Victims of Crime Services appears to be not very well set up for counselling child victims either, they prefer to refer them to Clare House, and this also depends on how old the child is. For criminal assault situations when the child is to go to Court, VoCS is there to work with the Police make sure they have video link up etc to make process less stressful for the child.

Apart from counselling services to children, I am also concerned that ancillary services, like transport to school and sufficient numbers of workers in the Refuge/Shelter for the child, needs to be maintained and extended so that the needs of children are properly met.

### **9. PART (3) – CHILDREN WHO ARE HOMELESS AND CHILDREN WHO ARE AT RISK OF HOMELESSNESS**

This Report advocated for proactive responses to children who at 'at risk' due to homelessness, through the seeking of orders under the Act where appropriate, and the provision of services by the Division to assist in situations where children are 'at risk' by living on the street and allegedly refusing assistance.

Issues this Report considered include:

- the lack of appropriate facilities for the safe custody of homeless children in Tasmania;
- State/Federal demarcation issues with respect to financial assistance to such children and best practice in providing assistance to children at risk
- Lack of services associated with underlying needs of the client that need to be addressed.

The Report advocated for:

- proactive inclusion of homeless children in the care and protection system;
- processes to factor in homelessness as an issue of risk;
- increased services, accommodation options and financial assistance to homeless children and those at risk of homelessness.

#### **9.1 UPDATE**

The issues of concern listed above have still not been fully addressed, and indeed, have also been raised in the Memorandum of Advice submitted to the Minister in May 2003 in relation to the Adolescent Community Placement Program.

In the current SAAP update<sup>2</sup> it is stated that the Youth Joint Action Group (JAG) has been formed as a 'decision making coalition between the Department of Health & Human Services and representatives of the Regional Youth Sector Co-ordinating Groups':

*Over an eighteen month period, the JAG developed Principles and Practice Guidelines for Workers in SAAP Services and Child and Family Services for Working Together with Young People Aged Under 18 who are Homeless or at risk of Homelessness<sup>3</sup>.*

This is a positive initial step that I commend the Department and the Division for. However, I do have further concerns and these are outlined in the next part.

### **9.1.2 FURTHER CONCERNS OF THIS OFFICE**

A recent Australian Institute of Health & Welfare Report, *Young Homeless People in Australia 2001-02*, showed that Tasmania had 169 per 10,000 people aged between 12 and 24 seeking the Supported Accommodation Assistance Program for help in 2001-02, compared to 100 per 10,000 nationally<sup>4</sup>. The Advocate reported that, the AIHW Report stated that 'on average more 12 to 24 year olds are homeless in Tasmania than any other State'<sup>5</sup>. However, a perusal of the said report at page 10 Table 3.1 shows that the total figures indicate that the Northern Territory had 269 clients per 10,000 in the population, in this category. This issue of the lack of secure housing for this group of young people needs to be addressed as a priority.

As discussed in Part 2.2.2, the subsuming of Shelters with Refuges also impacts on this age group. Generally once you are aged 12, you may not be able to accompany a parent escaping criminal assault at home to a refuge or shelter.

Since this change in the recent SAAP processes, anecdotal information received by this Office is that there has been an increase in 12 year olds seeking assistance from SAAP services. The systems issue here is that the Adolescent Community Placement Program starts for those aged 13. This means 12 year olds are falling into a service delivery gap, and must logically be contributing to increased numbers of children and young people on the streets.

#### ***Access to Emergency Accommodation***

This Office has been informed under the SAAP Guidelines that brokerage funds are not to be paid to a client for emergency accommodation until the fourth day after they have received payment from Centrelink. Under the Administrative and Operational Guidelines Amended October 2002, it is stated that:

*In order to manage the demand for emergency accommodation, the following criteria have been developed by agencies and are included as additions to the original guidelines:*

- *In times of high demand, accommodation is provided to those with the highest need. Need will be based on vulnerability;*
- *Persons in receipt of income in the last three days are excluded from emergency accommodation;*
- *Persons who have arrived in the State, or who have moved from one region to another, during the previous week are excluded from emergency accommodation assistance;*
- *A maximum of \$50 per night will be paid for a single room.*
- *These criteria should be implemented within the context of case planning.<sup>6</sup>*

*- emphasis added*

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<sup>2</sup> Department of Health & Human Services, SAAP Update No.17 (amendment) June 2003

<sup>3</sup> Department of Health & Human Services, SAAP Update No 17 June 2003

<sup>4</sup> See Australian Institute of Health & Welfare 2003, *Young Homeless People in Australia, 2001-02* AIHW cat no. HOU87 Canberra AIHW (SAAP NDCA Report)

<sup>5</sup> The Advocate, 9 July 2003 p3

<sup>6</sup> SAAP Administrative and Operational Guidelines Amended October 2002 Use of Brokerage Funds p4

I am informed that this criteria has been formulated because the client should be sufficiently funded given the Centrelink payment to secure their own accommodation. This is of concern, as the provision of emergency accommodation should always be assessed on the actual needs of the young person at all times. Some flexibility should be maintained to meet the needs of a young person who may have legitimate reasons for requiring emergency accommodation despite having received payment three days prior.

These new guidelines are of concern, as they once again place those under age 16 and those receiving Youth Allowance in a disadvantaged and difficult position, as they can be excluded from emergency accommodation when they need it. With the limited Youth Allowance payment, the cost of such private (backpacker etc.) or emergency accommodation is obviously unrealistic for young people.

### **Services for Children and Young People with disability or mental illness**

Concerns have also been raised with this Office regarding the services available to homeless young people, who also have a disability or mental illness. Anecdotal evidence is that we lack specific facilities for them. These concerns have also been specifically raised with respect to such services in Northern Tasmania:

- services are not being made available to homeless young people between 16 and 18 years of age,
- there is an apparent lack of Carer support for these young people between 7-9am in the morning and 4-8pm at night;
- when such Carer services are available, the level of funding provided is not adequate to cover the needs of the young people concerned.

I am currently requesting further information from the Division on this issue.

### **Services for Young Pregnant Women**

Also of concern is the lack of services available to young pregnant women and young mothers. Centacare previously had a program called Independent Family Accommodation Support (IFAS), which offered a number of services to young women under the age of 26 who had children or were pregnant. The program ceased to exist in the latter half of 2001. The program was able to provide short term accommodation for this group, with a specific focus on supporting those in this age group (including under 18's) toward independence. Young mothers were provided with parenting and pregnancy support, with workers on site between 9am and 5 pm each day. Mothers were taught parenting skills, such as child play skills, and an outreach service was also offered. In 2001, this program changed to become a program that provides services for all women, based around support rather than accommodation. Although the need for specific services for young mothers and pregnant women is recognised, lack of resources has meant such services are no longer available. We are aware that under 18 mothers are a very high risk category if they have homelessness issues, and as such, the demise of this service is of serious concern.

Unfortunately this program cut seems to have occurred after the SAAP Restructure, and it is the perception of the community, that this was the cause of the cut in this service. I am also informed that there is the need for this service in the community.

### **Services for children and young people with mental health issues.**

Limited services for children and young people with trauma and other mental health issues remain a concern as such services are still inadequate. These children and young people can present with what are unacceptable behaviour problems that make them unsuitable for shelters.

### **Services for children with substance abuse issues**

Once again, they have similar problems that make them unsuitable for shelter options. Unless they can receive specific assistance related to their issues, or other accommodation in the Adolescent Placement Programme, their options become limited and their absorption within the SAAP system is pre-programmed for failure and they are blamed.

In addition, some children and young people who seeking to address their substance abuse issues, are reluctant to be accommodated in shelters, as they state that they feel intimidated by others who are still addicted, or who are part of an informal group that seeks to sell illegal drugs to children and young people.

I respectfully suggest again that we need to deal with children and young people with high and complex needs in a more proactive manner. If this is not done, then they will continue to be “unsuitable” for emergency accommodation and will have limited or no options as a result. If we address the above issues in a reactive manner, with such high and complex needs adolescents, without sufficient services to assist them with problems, such problems will surface and we will have no where to accommodate them. They will then continue to be seen as a “problem” till they offend and enter or re-enter Ashley.

#### **10. PART (4) – LEGAL REPRESENTATION OF CHILDREN UNDER SECTION 59 OF THE CHILDREN YOUNG PERSONS & THEIR FAMILIES ACT 1997**

Under section 59 of the Act, a child can have a legal representative appointed before an attendance at the Court. This Office advocated that for a proper implementation of this section, the Division needs to supply information and to provide a referral service to the child as part of its practices, in order to discharge its obligation to assist children, in all cases where Court proceedings are to be issued. It was recommended that in order to fully implement this section, the Division needs to have adequate administrative directions to staff to supply information to the child with regard to this right.

##### **10.1 UPDATE**

We have had no formal response from the Division with respect to this Report as yet<sup>7</sup>, and as such I am not aware of any implementation of the recommendations made.

##### **10.1.2 FURTHER CONCERNS OF THIS OFFICE**

On the suggestion of the former Minister, we prepared documents on Rights of Children under this section but have not been informed if they are being routinely distributed to children and families as their right to information and support under the Act.

Anecdotal evidence is that children and young people are still unaware of this right that they have.

#### **11. PART (5) – THE RIGHT OF CHILDREN TO ADDRESS THE COURT UNDER SECTION 56 OF THE CHILDREN, YOUNG PERSONS & THEIR FAMILIES ACT**

This Report examined the implementation of section 56 of the Act, which allows the child to give his or her own views personally to the Court as to his or her ongoing care and protection, regardless of whether the child is represented or not.

This Office recommended that the Division provide this information to the child, and his or her parents, as soon as practicable once court proceedings have commenced. Prompt action should be taken to ensure that the child, their parents/caregivers are provided with the necessary information on this right to address the Court personally and to have legal representation in proceedings. This information should be available in language that both

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<sup>7</sup> In March 2002, the Division advised this Office that there would be a reply to the report at the request of the Minister as soon as possible.

adults and children can understand, and it may be appropriate to have separate child-friendly documents, as suggested earlier.

In addition, administrative directions need to be given to staff of the Division, to ensure that the child's right to address the Court and to be granted legal representation is clearly expressed to the child from the *initial* stages of the proceedings, to allow the child, their family and the child's legal representative to adequately prepare for the proceedings. This is to ensure procedural fairness to all parties in all Court proceedings initiated by the Division.

### **11.1 UPDATE**

We have had no formal response from the Division with respect to this Report as yet<sup>8</sup>, and as such I am not aware of any implementation of the recommendations made.

Once again anecdotal evidence suggest that children and young people are not aware of this right granted to them in law.

### **11.2 FURTHER CONCERNS OF THIS OFFICE**

Once again we have not been informed if the Brochures we prepared are being routinely circulated or distributed by the Division.

## **12. PART (6) – FORENSIC PROCEDURES ACT 2000: REVIEW OF ONE YEAR IN OPERATION**

This Report reviewed the impact of the *Forensic Procedures Act 2000* on the position of children, and raised a number of concerns relating to its operation, particularly in relation to the position of children between 15 and 17. The Report supported the amendments to the Act that were tabled before Parliament at the time, and raised some further ongoing issues that need to be addressed to ensure the best interest of children and youth were not marginalised in the attempt to solve crime. Some of these issues include:

1. Distinction under the Act between 'suspect' and 'person charged';
2. Informed consent of both the suspect/charged person and his or her parent;
3. What constitutes an 'informed consent';
4. Considerations for a Magistrate when determining the application to carry out a forensic procedures and the issue of Legal Aid funding;
5. A reclassification of the 'intimate and non-intimate' procedures;
6. Time limits allowed for children to be taken into custody for the purpose of forensic tests;
7. Independent witnesses – consultation with children under 18;
8. Definition of 'serious offence';
9. Issue of duty of care
10. Right to silence
11. The *Model Commonwealth Bill – Crimes Amendment (Forensic Procedures) Bill 1997*.
12. Mandatory legal representation for the child.

### **12.1 UPDATE**

The position for children between 15 and 17 under *Forensic Procedures Act 2000* remain as concerning as it was before. There were further amendments proposed under this Act in 2003, but relate to the national database system and does not address any of the concerns expressed by us in our Report.

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<sup>8</sup> In March 2002, the Division advised this Office that there would be a reply to the report at the request of the Minister as soon as possible.



## **12.2 FURTHER CONCERNS OF THIS OFFICE**

There was a Bill before Parliament presented prior to the election and this has now been vacated. It had a simple amendment to afford all those under 18 the same protection as all those under age 15. This is still recommended, as minimum protection for children and young people under the Act.

## **13. PART (7) – FAMILY GROUP CONFERENCING: BOTTOM LINES**

This Report focused specifically on the Division's use of 'bottom lines' in Family Group Conferences. This Office advocated that their current use is inappropriate as they do not represent a proper implementation of the Act, but rather, a move away from the intent of the Act, to give families a chance to resolve matters themselves, and for the child to express views and wishes that must be taken into account in the Family Group Conference.

This Office recommends that the Division reviews their practices and policies regarding the use of 'bottom lines' as we believe it is not a proper implementation of the Act, its spirit, or the vision of the Joint Select Committee that advocated for an end to the "child rescue model". It is also our concern and we advocate that the use of "Bottom Lines" can indeed be seen as ultra vires the principles of the Act.

### **13.1 UPDATE**

In response to our Report the Division has informed this Office that<sup>9</sup>:

- it is acknowledged that legislation per se does not include the term 'bottom line' – it has been drawn from procedures used in other states and countries where family group conferences are used.
- the term 'bottom line' means a base line definition of standard of care to which a child is entitled – these are set because a baseline level of care has been denied through substantiated abuse or neglect of the child.
- The intention of including written bottom lines is to ensure that families enter the conference equipped are not shocked with the Departmental representatives provide their report. This would minimise any distress, acrimony, confusion and anger that could result in fewer conferences achieving a successful resolution and prolong the process to the detriment of the child's wellbeing.
- Notwithstanding the above it is acknowledged that, at times, bottom lines as defined by the Department have been too prescriptive and tended to focus more on adult behaviour rather than a child's needs. They have also been changed at the last minute on occasions – these are practice issues that have already been noted and will be addressed.
- In future – Senior Practice Consultants will endorse the referrals to a Family Group Conference – this will ensure needs of the child or young person are clearly spelt out to the family and all parties to the conference and clearly reflect the issues of concern about safety, risk and needs which have led to statutory intervention and in most cases, relatively young and inexperienced.

The Division has also stated that<sup>10</sup>:

- Many staff within CFS are relatively young and inexperienced – working in partnership with families in the context of statutory power is a new experience for many of them. Providing the additional guidance and quality oversight through SPCs will help to improve the standard of referrals and clarification of what are currently described as 'bottom lines'
- A priority for the Division over the next 12 months is a comprehensive review of all practice guidelines within CFS to ensure a consistent approach across all functional areas

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<sup>9</sup> Correspondence from the Director of the Division of Children & Families dated 30 September 2002

<sup>10</sup> *ibid.*

as well as adherence to the Act. A great deal has been learnt over the past two years and it is important to translate these learnings into something transparent and tangible.

### **13.2 FURTHER CONCERNS OF THIS OFFICE**

We have again prepared material to be distributed to children, families and facilitators in 2002, but have not been informed if they are being used, distributed and provided to children and families.

In addition, we have made it clear that if “bottom lines” are expressed in terms of the provisions of the Act, then it would be acceptable as a guide to the child, family, workers and the Division.

Familiarity with the Act is vital and I am prepared to assist with regular meetings and seminars on this for all workers, but this offer has yet to be accepted. It is in the public interest that:-

- the care and protection system maintains its integrity;
- has the confidence of the public;
- and practices are done properly in accordance with the law.

Without this, we will lose sight of the best interests of the child being served at all times, in accordance with the paramount consideration under the Act.

### **14. PART (8) – ADJOURNMENT OF CRIMINAL PROCEEDINGS TO DETERMINE CARE AND PROTECTION ISSUES**

Research has shown that children and young people who have had contact with the welfare system are more likely to come into contact with the juvenile justice system<sup>11</sup>. This Report focused on the use of section 104 of the *Youth Justice Act 1997* to address the care and protection issues of children and youth who have been charged with offences and are brought before a Court on such charges. This section allows the Court to adjourn the criminal charges so that issues in the welfare jurisdiction can be addressed first.

This Office recommended that the Division implement processes and services to address care and protection issues and resolve them before children and youth are drawn into the criminal jurisdiction. If such proactive processes have not occurred to date then, urgent steps need to be taken to adjourn criminal proceedings, so that such care and protection issues can be fully and explored and resolved, before any charges are heard. It is not sufficient to leave matters to a Pre Sentence Report, as the purpose of the provisions of section 104 would then be defeated, as criminal charges would then have been heard and determined without a prior consideration of the care and protection concerns. This is necessary to prevent children and young people being drawn into the juvenile justice jurisdiction and Ashley.

#### **14.2 UPDATE**

In response to our Report the Division has informed this Office that:

- If the young person has previous contact or involvement with services in the Children & Families Division, it is the practice to assist and provide the young person and their legal representative with all relevant information within agency and freedom of information guidelines. This may be through access to information on file such as assessment and other relevant reports.
- If the young person is subject to a care and protection order or is currently being assessed, assisted or supported by CFS, the youth justice worker will consult with the relevant worker in CFS in the preparation of Court Reports. This provides an opportunity for the inclusion of relevant background information for consideration by the Court.
- This is a very complex issue and difficulties are occasionally experience obtaining timely assessment for clients. It is hoped that the Our Kids initiative will assist in improving

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<sup>11</sup> see my earlier Reports to Parliament on the Implementation of the Act

this. A major strategy of Our Kids is increased collaboration and linkages across services and particularly with Child and Adolescent Services where there are clearly very key links.

#### **14.3 FURTHER CONCERNS OF THIS OFFICE**

I am still concerned that section 104 does not appear to be being proactively utilised. This has been confirmed anecdotally by members of the community. All the above responses appear not to allow for an *adjournment* of proceedings but simply a *delay*. It need not be limited to this narrow interpretation if we are to properly assist children and young people in accordance with diversionary principles espoused in the *Youth Justice Act 1997*. For this statutory option to be effective and divert children away from the juvenile justice process and Ashley, we must have an adjournment. It needs collaboration and cooperation with Tasmania Police and not just lawyers for the child or young person. Tasmania Police are able to adjourn criminal proceedings *sine die* as the court has inherent powers to do this. I have recently confirmed this with the Solicitor General.

Once again, we are not having an interpretation of the Act in this area that can properly assist children and young people. This Office received considerable resistance and dismissal of this option when it was first raised by me at the Youth Justice Task Force meetings held under the umbrella of the Human Rights Education Committee of Tasmania. The lawyers on the Committee were asked to research this and were told by a former Project Worker and those that were contacted in the then Division of Child Youth and Family Support, that the Commissioner had misunderstood the Act, as section 104 and 105, were simply “administrative” in nature. Fortunately, Tasmania Police do not share this view I am informed that they are reviewing their Protocol with the Division to incorporate children and young people who have been charged and have the difficulties the Act envisaged under section 104 and 105.

I am unsure whether the Division is also updating their Protocol with the Department of Education, with respect to best practice and notifications and follow up with respect to mental health and care and protection concerns that children present at school and I would be pleased to receive an update on this.

One of the pivotal recommendations in the body of the Report, was the setting up of a multi-disciplinary Panel. This has not been established. In New Zealand I observed a model of one such body and am impressed with the high level of success with the approach they have taken. This is based on the principles I have mentioned in my Paper delivered at the Conference in Dunedin, New Zealand<sup>12</sup>.

#### **15 PART (9) - ADJOURNMENT OF CRIMINAL PROCEEDINGS TO DETERMINE MENTAL OR NERVOUS HEALTH ISSUES**

Current literature on juvenile offending often raises the issue of their mental health. As with section 104, this Report concluded that section 105 of the Youth Justice Act is not being properly implemented to assist children and youth with mental health problems. The Report advocated that there is a need for the Division of Children & Families and Tasmania Police to review the current Memorandum of Understanding to clarify their respective responsibilities in dealing with young offenders with mental health issues. The Report also recommended for section 105 to be implemented via:

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<sup>12</sup> A copy of this Paper can be found on our website at <http://www.childcomm.tas.gov.au> under Papers & Reports

- a multi-disciplinary approach to assessing the mental health issues and needs of child offenders. Such a multi-disciplinary panel should include a child psychologist, a special education expert, a child legal representative, a paediatrician, a youth worker etc.
- a *Children's Court Liaison Officer* to assesses the mental health of young people who appear before the Court on criminal charges, and to advise the Court on any issues of concern, and to liaises with the Court on details of appropriate care and treatment of mental health issues of the charged person, as that person proceeds through the criminal justice system;
- care being taken to ensure that the diagnosis of mental health problems and services to those affected, remain sufficiently flexible to take into account the child or young person's age, development and background.
- that children and youth held at Ashley who are identified as repeat offenders undergo a similar comprehensive mental health assessment so that any underlying mental health issues that have not yet been identified can be treated and resolved.

This Office also advocates that in the best interests of the child's development, the remanding of the child in custody be avoided where possible, and that the Division be proactive in finding an appropriate placement for the child during this period where it may not possible for the child to stay with their family.

#### **15.1 UPDATE**

The Division has responded to my concerns as follows<sup>13</sup>:

- when concerns are raised regarding the mental health state of a young person, a referral is made to services such as Child and Adolescent Mental Health Services, a psychologist or a psychiatrist for an assessment.
- Assessments of the young person's mental health state may then be conducted within the community, in a hospital or in the Ashley Youth Detention Centre. These assessments are then available for the consideration of the Court.
- If during proceedings the Court adjourns proceedings and remands the young person for observation and assessment of their mental health state, a suitable placement will be sought through CAMHS or through Mental Health Services. Such placements may be in the hospital system or at Ashley.
- This is a very complex issue and difficulties are occasionally experience obtaining timely assessment for clients. It is hoped that the Our Kids initiative will assist in improving this. A major strategy of Our Kids is increased collaboration and linkages across services and particularly with Child and Adolescent Services where there are clearly very key links.

#### **15.2 FURTHER CONCERNS OF THIS OFFICE**

It still appears to be the case that the only immediate *temporary* option is to utilise the secure reception rooms that already exist at Ashley for such high risk children and youth, during the assessment period. They should be treated as patients within the health and welfare systems, as well as being alleged juvenile offenders within a juvenile justice system. The emphasis for them must be predominantly treatment options.

I am also concerned that there appears to be a lack of suitable facility for remanding children who have mental health issues under section 105. In one particular case, a young person was remanded under section 105 to Ashley, with the Magistrate allegedly acknowledging that Ashley may not be a fully adequate place for the needs of the young person.

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<sup>13</sup> correspondence from Director of the Division dated 27 August 2002

The other issue of concern is that these children are placed in youth shelters which do not offer services and facilities appropriate to their needs. When they act out there, they can be 'banned' so that they are unable to, access any shelter at all. This is a dangerous outcome for them, as they are then in danger of committing offences to survive on the streets.

Section 105 also requires a response from Tasmania Police and the Department of Education. I have been informed that the Police are looking at amending the Protocol between them and the Division of Children and Families, to factor in children who are seen as offenders.

As with section 104, the proactive use of section 105 appears to be lacking at present, as confirmed by the community consultations we have undertaken. Once again, the opportunity to have a diversion and not simply a delay seems not be an option seriously considered by the Division. This diversionary process needs collaboration with all those involved with the child and young person. This must be of urgent concern, as we could cut down the numbers of such children and young people at Ashley if we have this therapeutic and non criminal approach. However, this of course needs an increase in treatment and diversionary options in the community. This must be a priority with Youth Justice and I have nominated the Manager of Ashley to be on the Northern Youth Consultative Committee based in Launceston, so that he can attend and make the links with the community sector in the north. He has confirmed to me the high number of those from the north who are at Ashley, and as such, the needs of children and young people in that area must be addressed in the proactive manner I have suggested.

I strongly support the proposal I made for a Multi Disciplinary Panel in part 5 of my Report to Parliament on the Implementation of the Act. I have ascertained that there is now a project in New Zealand mentioned earlier that picks up on a symptom, and looks at underlying causes. The symptom that this particular service picks up on is truancy. Children and young people from age 11 and 18 can attend and make initial contact with a worker at this Centre. The centre is run on a rights based model and the child or young person's situation is assessed, a case management plan is proposed with the client's participation and input and this is case managed. Advocacy for the client commences and an appropriate referral is made to a service that can assist the client with the particular difficulties faced. Thereafter, the progress of the child is monitored with successful re-engagement and return to education as the desired outcome.

We have these innovative sections and I strongly and respectfully recommend that they must be properly implemented now.

## **16 PART (10) - RESPONSES TO DISCLOSURES AND REPORTS OF PHYSICAL AND SEXUAL ASSAULTS IN CHILDREN**

The focus of this Report is on the processes within the Division dealing with disclosures, reports and allegations of child sexual and physical assaults. The Report also examines the Division's interaction with Tasmania Police, and the Family Court, as well as how the notification process currently in place is responding to protect children subjected to sexual and physical assault, and preventing their further victimisation.

The Report concluded that various factors are currently acting as a barrier to a thorough assessment of reports of violence against children, particularly where there are Family Court proceedings on foot. A number of recommendations were made, including:

### **Recommendations**

- reviewing the Division's current protocol with the Family Court to take into account the developments of the Magellan Project, implemented from 1<sup>st</sup> July 2003;

- the recording of all notifications to CPARS (now Intake & Assessment) and keeping three types 'Child-At-Risk' Registers on children who are the subject of consultations, reports and notifications made to the Division, respectively;
- focus of the assessment process to be widened to a comprehensive assessment of the risks to the child from the past and the present to assess future risk.
- establishment of processes that enable development of a response that is consistent with the best interests of the child, as well as addressing the risks to the child;
- implementing a follow up process to monitor the continued safety of the child in cases classified as 'consultations' or where an investigation or other action is found to be not possible at the time that the assessment is carried out;
- strict adherence and compliance with the MoU between the Division and the Tasmania Police for effective communication between these Agencies in the best interests of children;
- pro-active use and vigilant enforcement of Restraint Orders to protect the child and family to ensure safety and stability in the child's life;
- having workers trained in dealing with domestic violence as part of the Team at CPARS, as is being done in some other States in Australia;
- development of material that can be provided at the first notification/consultation event, to non offending partners in partner violence situations, that indicate the impact of the full range of domestic violence on children;
- specific processes to assess if children have been sexually assaulted in situations where there has been partner or sibling violence;
- early risk assessment of a child who is the subject of a consultation, notification or report when there is partner violence;
- an early referral to services where there is a report or a disclosure of a sexual or physical assault;
- expansion of services to allow for early identification, support and services to children and families at risk.

### **16.1 UPDATE**

The Division has informed me that<sup>14</sup>:

- all information provided as part of a consultation is documented;
- whilst no central tally of the number of consultations is maintained, all information provided as part of the consultation is documented for future reference should further reports concerning the child involved be forthcoming

### **16.2 FURTHER CONCERNS OF THIS OFFICE**

We need to be informed just how CPARS is to maintain data, so we have a more accurate picture of all notifications etc. and that they will be treated in accordance with the Act;

How the system is going to respond to the Family Court in "serious" cases (for the Magellan project) of child abuse and in all other cases where a Notice of Abuse is filed in the Family Court.

How the protocol with the Police is to be properly implemented so Police can properly investigate so that CPARS are not "screening out" what needs to go to Police.

How information is to be responded to from the public and what feed back there is going to be to them as to their concerns.

What new administrative instructions are to be for CPARS and how child protection will follow from a notification.

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<sup>14</sup> correspondence from Director of the Division dated 20 August 2002

I have still not received feedback from the Division on how proactive they are being with respect to using restraint orders to remove the danger to the child from the home where there is more than one care giver. This is a requirement of the Act and needs to be implemented. I would also require feedback on how proactive they can be in making sure that such orders are being enforced by the Police.

In addition the unfortunate ambiguities in the criminal law that allow children to be hurt in the name of physical discipline has been partially addressed by the Department in its new position to corporal punishment by parents and carers. This is an excellent outcome that I congratulate the Division on. However, to fully protect children equally before the law, and achieve consistency in child protection is a matter beyond the Department and one for the Government and law reform

## **PART VII OUR KIDS STRATEGIC POLICY, OUR KIDS BUREAU AND ACTION PLAN**

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In this part, I will make further reference to the *Our Kids* Strategic Policy, the Our Kids Bureau and their Action Plan and in this context, what progress has been made to address deficiencies identified in the 10 reports to Parliament in the 2001/2002 Annual Report.

### **7.1 COLLABORATION WITH OUR KIDS BUREAU**

I will first refer to the position of the Minister in the introduction to the *Our Kids* Strategic Policy launched in 2002. The Honourable Minister stated that:

- *The strong commitment of Government to the early years has been reflected in the establishment of an Our Kids Bureau that will manage policy initiatives designed to improve outcomes for children in Tasmania.*
- *A three year action plan based on this policy framework will be published following the consultation process.*

The Division has now completed the process of consulting on the *Our Kids* document launched last year. Last year too this Office made recommendations that were necessary to improve outcomes for the children of Tasmania in the child protection system. We asked for these recommendations to be factored into the Action Plan that is to be produced by the *Our Kids* Bureau, and as the former Minister announced that the *Our Kids* Initiative will be receiving funding of \$700,000, the proposal we made was feasible. I suggested too that this Action Plan can draw on the strengths of the *Children, Young Persons and their Families Act 1997*, which I have stated has to be the statutory framework for any new changes in practice, policy and service delivery to the children of Tasmania.

Last year I also suggested that a partnership could be forged between this Office and the *Our Kids* Bureau, by their factoring of the recommendations we have made into their action Plan. However, there has been little collaboration to date between this Office and the Bureau, although I have been given some information on what is proposed in the Action Plan. Equally importantly, I have asked that they draw up simple child friendly versions of the Strategic Policy and Action Plan to consult with children and young people and it appears that neither of these two documents nor the consultations that I have suggested have occurred. As we have some primary schools in this State that have Student Representative Councils, I believe that consultation with them can be explored, once child friendly documents have been produced.

## **7.2 OUR KIDS ACTION PLAN UPDATE : SYSTEMS ISSUES AND FOCUS ON SERVICES FOR CHILDREN AND FAMILIES**

Last year I advocated strongly for the Action Plan to be developed, factoring in all our recommendations, as the first step in improved service delivery. I suggested that we can achieve outcomes proposed by the *Our Kids* Bureau working with this Office to remedy the deficiencies addressed as a matter of priority in their Action Plan. This has not happened with the Bureau, but we have progressed some of the deficiencies with the Division of Children and Families, as set out above. However, I suggest in the interest of efficiency that a proper table be set up, so that we can see the issues, and strategies that are proposed to resolve them and how this is to be done as well as where the funding is to come from.

## **7.3 A RIGHTS BASED CONTEXT**

In any Action Plan that is to have an integrated systems approach, we must not lose sight of the need to provide early intervention services as a priority. If not, we will see problems for which there will need to be even more expensive statutory care and protection intervention. We must also not lose sight of the requirements set out in the Act mentioned earlier in this Report. These statutory principles require us to operate within a rights based context that is mandatory and based on the law and not a more discretionary one based on policy.

## **7.4 RIGHTS OF THE CHILD AS THE BASIS FOR INTEGRATED SERVICES**

I am concerned to advocate that in all our endeavours in relation to the integration of services, we do not regard this exercise simply as a systems and organisational issue. It must also be regarded as an issue about how we can effectively utilise this approach to respond to, and assist individual children and young people in need. If you take the Convention and our laws in Tasmania as a starting point, service delivery is all about the rights of the individual child – that is:

- a. acknowledging that a child has intrinsic and alienable human rights;
- b. implementation of a child's intrinsic and alienable human rights;
- c. restoration of these rights taken away by a history of deprivation and disadvantage;
- d. effective response of the system and organisation to a child's developmental needs;
- e. this needs to be seen as a right of the child, to reach his or her full potential.

## **7.5 PRINCIPLES OF THE ACT TO BE OBSERVED IN DEALING WITH CHILDREN**

In other words, we must deal with the child's issues and not just the systems issues, in the manner the Act envisages. I acknowledge that the integration or joining up of services is also about how we can address deficiencies in the system, but we need to be clear at all times that the deficiency may mean more than just systems efficiency and financial economy. We need to look at policies and practices and assess how we can better deliver services to children and families, to respond to a child's, young person's or a family's needs. These must be seen in the context of the rights of children to develop to their full potential, through prevention of deprivation and disadvantage in their lives and in the lives of their families. This is what the Act demands.

We need to address causal factors, and not just the symptoms of deprivation and disadvantage. Care and protection issues are usually precursors of other difficult behaviours (See my earlier Reports to Parliament on the Implementation of the Act), that can lead to persistent risk-taking and anti-social behaviour, which can in turn lead to juvenile offending behaviours. The challenge facing this integrated approach to service delivery, I believe, lies



in considering how we can work together to better respond to the needs of at risk children and their families. In other words, there should be a focus on how the child or young person is actually going to be helped, rather than simply looking at only management and service delivery issues. One omission that is apparent in this exercise, with respect to service delivery issues, is the need not just for performance indicators for macro service delivery, but performance measures for evaluating existing child protection services, and the routine evaluation of services to individual children in care.

#### **7.6 THE NEED FOR EARLY IDENTIFICATION, EARLY SUPPORT AND EARLY INTERVENTION**

However, I am encouraged to see that this earliest Draft that I have viewed does emphasise early identification and this is entirely appropriate. It also appears that as I respectfully recommended last year, this is being seen as a priority in itself, without simply an emphasis on improving systems by a rationalisation or integration of services. I have acknowledge that costs savings are important, but the best interests of the child must be paramount, to comply with the Act, which is based on the *United Nations Convention on the Rights of the Child*.

### **PART VIII MEMORANDA OF ADVICE TO MINISTER 2002 2003**

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#### **8. MEMORANDA OF ADVICE TO MINISTER 2002 - 2003**

The following is a list of the Memoranda of Advice that this Office has submitted to the Minister from October 2002 to June 2003. These Memoranda flow from the ten Reports to Parliament last year and contain our advocacy and recommendations with respect to services, policies and practices that impact on children and young people of Tasmania. They are also “follow ups” to the ten Reports and are the result of community consultation as well as our concerns and inquiries process. These Memoranda are attached to this Annual Report.

<b>Month</b>	<b>Date</b>	<b>Subject</b>
<b>2002</b>		
October	6 Nov 02	Family Group Conferences
	6 Nov 02	Responsibility to Prevent Abuse and Neglect/Informing of Concern about Abuse and Neglect
	6 Nov 02	Role of the Secretary’s Advisory Panel
November	9 Dec 02	Services for Children Accompanying Parents Who are Victims of Partner Violence
	9 Dec 02	Support for Kinship Care
December		Banning of Physical Punishment – Tasmania Law Reform Institute Submissions
	24 Dec 02	Fragile X Research Project
<b>2003</b>		
January	31 Jan 03	Character Checks for those Seeking to Work with Children
	31 Jan 03	Repeal of Defence of Domestic Discipline of Children
	31 Jan 03	Consistency in Government Policy with regard to Offences Against the Person
February	27 Feb 03	Draft Guidelines to Respond to Violent Student Behaviour in Schools
	27 Feb 03	Practices and Policies of the Australian Defence Force with respect to the health, welfare, care, protection and development of children under 18
	27 Feb 03	Issues of the Youth Justice Act
March	28 Mar 03	Adoption by Same Sex Couples

	28 Mar 03	Children and Young People At Risk in Schools – Role of the Department of Health & Human Services in Early Intervention
	28 Mar 03	Caffeine as an additive to Soft Drinks
April	29 Apr 03	Role of the DHHS in Providing Support for Parents
	29 Apr 03	Risdon Strip Searches
	29 Apr 03	Ashley Standard Operating Procedures
May	30 May 03	Practices and Policies of the Department of Immigration and Multicultural and Indigenous Affairs with Respect to Refugee and Asylum Seeker Children and Families
	30 May 03	Adolescent Community Placement Program
	30 May 03	Preliminary Memo: National Sexual Assault Reform Committee
	30 May 03	Addendum Memo: National Sexual Assault Reform Committee: Assistance to Child Victims in the Criminal Justice Process
June	30 Jun 03	Preliminary Memo: Our Kids Update
	30 Jun 03	Guidelines for the Hospitalization of Children
	30 Jun 03	The Impact of the Mining Industry Work Practices on Children, Families and the Community on the West Coast of Tasmania and the need for Community Capacity Building in the Region
	30 Jun 03	Proposed National Agenda for Early Childhood

The above represents what I have been able to assess this year. It is not an exhaustive list, as there are still other matters that I wish to scrutinise, advocate for and progress. Amongst these are some of the matters my Advisory Council stated I should examine. Some of these issues have been embedded in the others I have referred to, but they deserve more detailed attention. These will be the subject of Memoranda of Advice before the end of my three years in Office.

### **8.1 INTERNAL COMPLAINTS PROCESSES**

I have asked for information to be provided to members of the public, that indicates exactly how they can make complaints against the Division, and this information has not been supplied to me to date. Last year I formulated a Flow Chart, indicating how the internal complaints system could function and this year I produced a similar flow chart for complaints that the public wish to make about Ashley. Both have been checked and approved by the Ombudsman, but we have still some way to go, to have these processes properly established within the Division. This is needed so that there is transparency and accountability in the child protection as well as the juvenile justice systems. The fact that three years have now passed and no such information is available must be of concern to all of us.

## **PART IX COMMISSIONER FOR CHILDREN'S CONSULTATIVE COUNCIL OF CHILDREN AND YOUNG PEOPLE**

### **9. COMMISSIONER FOR CHILDREN'S CONSULTATIVE COUNCIL**

The Council has continued with its operations successfully this year. I would like to develop this Council much more than I have been able to this year, in accordance with the extremely successful model that has been developed in the north west by Mike Gaffney of the Barrington District Support Services of the Education Department. He has established a Junior Council from all schools in the Barrington area and they meet regularly in accordance with a local government format. Some children and young people from this Junior Council become members of my north west Consultative Council. This is a very good model, as the Junior Council meets more often than once every three months. This time lag between meetings has been commented on as being too long for my Consultative Council members.

The meetings of a District Junior Council would overcome this problem. It would be appropriate if all education district offices could facilitate such a Junior local council.

In addition, this year some children and young people have approached me to explore ways in which they can be more proactive in peer support with further information to their peers on their rights. They have suggested that we can do it in various areas where information could assist them with the pressures they are now faced with. They wish to draw up brochures and take active steps to assist their peers within existing service delivery processes. These and other projects nominated by them have not been able to be progressed, as much as I have wished given our finite resources of time and funds for these particular issues. We need to work in partnership with others to fulfil the priorities and legitimate expectations of children and young people in this State. All these are possibilities that need to be explored, as we need to be responsive to issues nominated by our Consultative Council members, as a priority next year, as they do reflect the big picture that the Advisory Council had asked me to look at.

### **9.1 STATE WIDE MEETING ON CITIZENSHIP SKILLS AND LEADERSHIP WORKSHOP**

On June 13<sup>th</sup>, 2003, the Commissioner for Children Consultative Council held a Statewide meeting in the form of a Citizenship Skills and Leadership Workshop that was administered by TASDEC. The session was held in Hobart and young people from the North and South and North West attended. Young people from the West were expected to attend but this proved too difficult with the other competing priorities they had. This was to set up an Exhibition for the visiting Asia Pacific Commissioner's on a video they had produced about their lives on the West Coast. At this workshop, young people were encouraged to participate and explore issues that they nominated. I refer to highlights of what was achieved at this workshop on Citizenship Skills and Leadership on June 13, 2003.

**THEME: Everyone is a learner, a teacher, a citizen and a leader.**

#### Introductions

Introductions were made with a "Round Robin" format. Participants introduced themselves and stated what they expected to gain from the workshop. They then broke the ice further with a "Blind Trust Walk" where the group divided into pairs and one of the pair pretended to be blind with the other leading them around obstacles in the room.

#### What Participants wanted to gain from the Workshop

Participants were asked what they wanted or expected to gain from the Workshop. Their answers included meeting new people, enhancing leadership skills, voicing concerns on issues, sharing of issues, become active in youth issues and learning about and developing the ability to voice such issues.

#### Handouts given

Various brochures were distributed to assist with the workshop and they included:-

- Rules for Successful Group Work
- UN Declaration of Human Rights
- Convention on the Rights of the Child
- Students Rights

#### Discussion on youth issues and these were the issues raised:

A discussion followed on youth issues and these are the issues raised:-

- Age discrimination
- Depression

- Alcohol abuse
- Fear of US warships in Derwent – environment, terrorist target
- Violence
- Environment – a lack of programs in schools
- Drugs
- Transport
- lack of in rural areas
- costs
- getting transport to employment in rural areas
- timetables in rural areas
- Obesity
- Lack of youth activities
- Parental education
- Privacy issues
- Socio-economic behaviour
- Access to and know of services for youth
- Unemployment
- Entrepreneurship skills
- School
- education system is flawed, it doesn't teach pro-activeness
- want education to be more relevant
- want equality – don't stereotype
- more education on health issues eg. sexual health, drugs
- want to be heard – the SRC is tokenistic
- lack of language variety
- unqualified teachers
- students are unprepared for Grade 12 exams

### Rights and Responsibilities

There was also a discussion on rights and responsibilities. The approach taken here was to work in small groups exploring what it means to be concerned with human rights, citizenship and what activities can be taken in these areas. They discussed “Citizenship”, brainstorming on what it means to be a good citizen. Members also explored what Citizenship Activity would involve. They formed small groups, drawing symbols or making statement indicating the links between being a good local citizen, national citizen and global citizen. Handouts were provided to assist with ideas about, what can be done, and the participatory processes involved, using the “Ladder of Participation” concept. Outcomes from these sessions were enlightening and significant and I set them out below in full.

### Group Work on Human Rights Activity Rights and Rules

#### **Group 1**

- People who do have rights should not take them for granted.
- Those who don't have basic rights may not have the feeling of “self-worth”.
- All rights go with each other to ensure well being in life.
- Rights are connected. They can't be divided into categories.
- Rights must be “possible” and reasonable.
- Rights conflict and often contradict each other.
- Everyone should respect each others rights and maintain them.
- There's enough for everybody, it's just not fairly distributed.
- People make rights, they can make rights as long as they follow the above rules.

#### **Group 2**

- Rights are important as they influence the way a person sees themselves, therefore, this can affect an entire community.
- It would be impossible to write one statement that incorporated all the Human Rights but they all have the same basis.
- There must be certain measures taken to ensure that a right is sustainable.
- Everyone must be aware of how they use their rights and how this affects other's rights.
- Rights come with responsibility.

### **Group 3**

- Rights are important and should not be taken for granted but they are e.g. developed countries have more opportunities for rights.
- Rights are interrelated but can be divided eg. a homeless person should have the right to be as safe as someone in a house.
- Rights should be constant and stable even when certain situations arise eg. war.

### **Group 4**

- No-one's going to listen to you sit back and do nothing. You need to show initiative and lead by example.
- There is a distinct relationship between self esteem and rights.
- You can't have one right without the other eg. a student should have the right to both listen and be heard.
- Rights can't be stopped and started for the convenience of a disagreeing party.
- The rights of one person may seem to be interfering with the rights of another when most of the time it was really a

- The rights of one person should not conflict with that of others – tolerance, understanding, acceptance.
- Look out for the rights of your neighbours.
- The world's resources should be distributed accordingly in order to uphold rights.

convenience not a true right eg. women 'taking men's jobs'.

- Everyone should enforce the rights and should make sure that rights can be created for those less fortunate.
- Human nature is to put number one first. There will never be WORLD PEACE until we learn not to be selfish and think of others less fortunate.

**There was also a “Human Rights Auction”** where participants were given a person and an amount of money eg. Iraqi woman \$100, American man \$1,000 and they had to bid for rights eg. clean water, education.

The session concluded with a Self Esteem Exercise and their comments on the workshop.

### **Participants Comments on Workshop**

- Enlightening citizenship section
- Very educational, much better than school.
- The question of what can we do in our community was interesting
- Good time, good fun great people
- Glad we did this – it was a shame we didn't have more time for further discussion. I enjoyed hearing others opinions, and the situations in other places. I would like to take some action soon, but at a later date.

Tasdec Global learning Centre ran this workshop. I had asked them to do this to benefit my Consultative Council members, as well as to appraise what value it could have for other youth groups. I had in mind that young people at Ashley could benefit from such an affirming workshop as well, with some modifications. Given the positive feedback, to this Workshop by Tasdec, this is now an option.

## **PART X THE FUTURE**

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### **10. THE WAY AHEAD FOR CHILDREN IN 2003 –2004**

I believe that it is necessary in the next year to concentrate further on children, young people and families.

Three approaches that may be of major interest next year relate to addressing the needs of Aboriginal children, the banning of physical punishment with a corresponding strategy to raise public awareness on alternatives to hitting children and the drawing up a Charter or Constitution for Children in Tasmania.

#### **Aboriginal children**

I have commenced dealing with Aboriginal communities with some success, as their needs are enormous, but I believe I have commenced my engagement with them in both the care and protection system and the juvenile justice system. We have certain principles we need to follow that are set down in both the *Children, Young Persons and their Families Act 1977* as well as the *Youth Justice Act 1997*. I would need to assess if practices and policies comply with both the Acts of Parliament that refer to Aboriginal children and young people. It is important that we have specific policies for them, as there is a saying given to me by the Aboriginal community that:-

*“there is nothing more unequal than the equal treatment of unequals”.*

These are all matters I would like to assess with respect to policies and practices of the Division. This will be a very large project, and for this I will need an Aboriginal Project Officer, as it is not ethical to assess these issues without the perspective of a member of the Aboriginal community. This must be commenced next year, as I will not be able to achieve these objectives in this term of Office. I have commenced by developing my relationship with the community, which I believe I have been able to do successfully, but this is just the first step.

#### **A Charter or Constitution for Children’s Rights in Tasmania**

As it will be the Bicentennial year next year, I hope to work in conjunction with others and have a Tasmanian Constitutional Convention for Children next year. I have commenced making plans for it, with Professor Margaret Reynolds who organised the Centenary of Federation Parliamentary sessions for children all around Tasmania with the 29 local councils in 2001. I drew up a preamble in December 2001, and have sent this to her, for her to work on as a start. I have prepared a preamble for a Charter of Rights for Children in Tasmania and will be promoting this further, by selecting schools to consider individual Articles under the Convention on the Rights of the Child. With individual articles as a guide, I hope to have expressions of what children and young people feel about rights they wish to have in a Local context. Once all these are to hand, I can collate them and provide a Draft Charter for all to view, and somewhat ambitiously, have a constitutional convention for the Charter. This is a very ambitious task, as at present, within this Office, there are simply insufficient funding and human resources to have such a major enterprise such as this. I will look at a partnership with the Department of Education and others to progress this vision.

## **THE WAY AHEAD FOR THE OFFICE OF THE COMMISSIONER FOR CHILDREN**

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The functions of the Commissioner are new and it will take time for information about the rights of children and young people to become absorbed into the fabric of life in Tasmania. However, it is of interest to me that we have established our presence nationally and internationally very significantly. In 2002, I presented a document to the United Nations Human Rights Commission in Geneva on Tasmania's legislative compliance with the Convention. Last year too I was invited to the United Nations for the inaugural meeting of the International Human Rights Institutions for Children in May 2002. Earlier, I had prepared a "due diligence" document assessing if as an Office we complied with human rights principles required by the Paris Principles established by the United Nations. It was good to see that we did comply with this document as well, and this was submitted to UNICEF and the United Nations in time for the United Nations General Assembly Special Session for Children.

In Tasmania, I believe that we are united in ensuring that our children and young people have the right to access the services, policies and practices that have their best interests in mind. Advocacy to increase the awareness of the public on issues related to the health, welfare, care, protection and development of children, and what their role can be continues. From January 2003, I commenced a campaign to make Tasmania a "Child Friendly State" and this will be ongoing. This seeks a recognition from all of us of the need to create a supportive environment for children everywhere in the State. We need our young people to believe that they are of the utmost importance to us. They need to believe that we value them and we need to demonstrate this by showing them how they can have a crucial role in the future of this State. Their participation and self determination, will add value to all our efforts in developing this State and a better for future for us all. We need to realise that our success or failure in this endeavour, will impact on all of us. I look forward to progressing all such initiatives in the future, in an even more collaborative manner with more people in the community as partners of this Office.

### **ACKNOWLEDGEMENTS**

I would like to acknowledge that all the achievements of the Office to date would not have been possible without the assistance of my existing partners. My staff, my Advisory and Consultative Councils as well as the general community. However, within the context of the independence of this Office, I wish to also acknowledge the Director of the Division of Children and Families who has been working with me to address all of the issues on the implementation of the Act that I provided to Parliament last year. In addition the Minister and all other agencies that I have commented on this year in my Memoranda of Advice, must be commended too for their cooperation. Although the concerns that I have advised the Minister of, have been difficult and reflect entrenched systems issues, they have been acknowledged, by and large and reviewed in a conscientious and serious manner. Many of the concerns that have been expressed this year have already been addressed by responses in the various systems. My last acknowledgement is to all members of Parliament who have facilitated my efforts by considering all matters that have been brought to their attention in a largely non partisan manner. The work that we all need to do for the children, young people and families of Tasmania is too crucial for all our futures to be marginalised into party political issues. This continued cooperation and hard work with all agencies, and everyone involved in these endeavours, gives me confidence that together we can all work towards resolving ongoing issues for children, young people and their families, in our journey to best practice, that by its nature, is always a journey with no end.

Patmalar Ambikapathy  
Commissioner for Children: Tasmania

**APPENDIX 1. FINANCIAL STATEMENT 2002- 2003.**

2002/03 Financial Report – Office of the Commissioner for Children

	\$'000	\$'000	\$'000
Budget allocated by Parliament 2002-03			298
Less Allocation for share of Departmental Corporate Overheads (Indirect Costs)			58
Budget available for 2002-03			240

**BUDGET OUTLAYS (Direct Costs)**

Salaries and Related Expenditure			
Salaries and Wages	164		
Other Employee Related Expenses	33	197	
Operating Expenditure			
Communications	4		
Staff Travel	7		
Motor Vehicle Expenses	8		
Advertising and Promotion	1		
Consultants	1		
IT Leases and Licenses	5		
Client Expenses	1		
Office Requisites	4		
Rental of Equipment	4		
Other Expenses	8	43	240
TOTAL SURPLUS / DEFICIT			
			-

Notes

All amounts rounded to nearest \$1,000

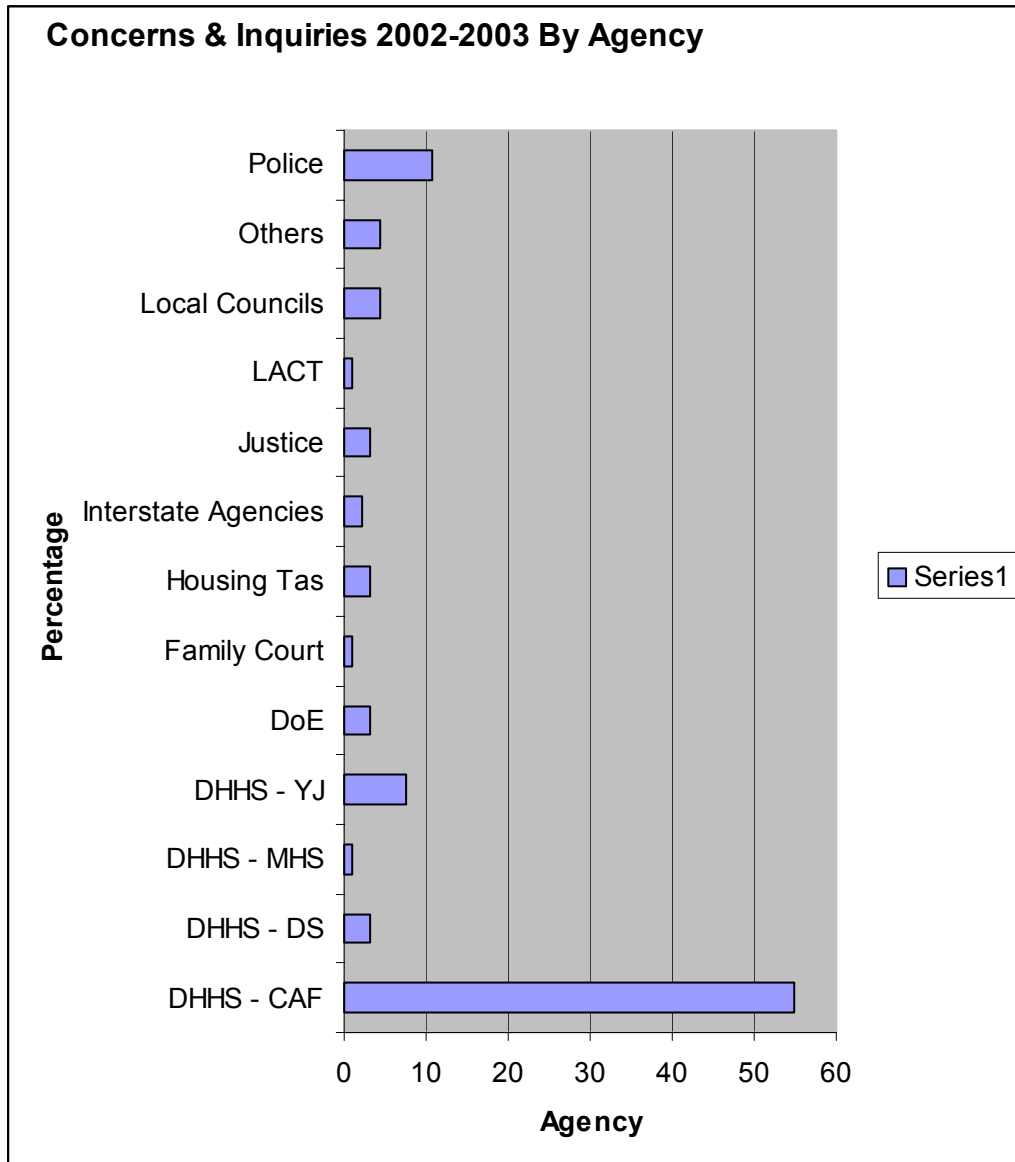
This Financial Statement has been prepared on a cash basis.

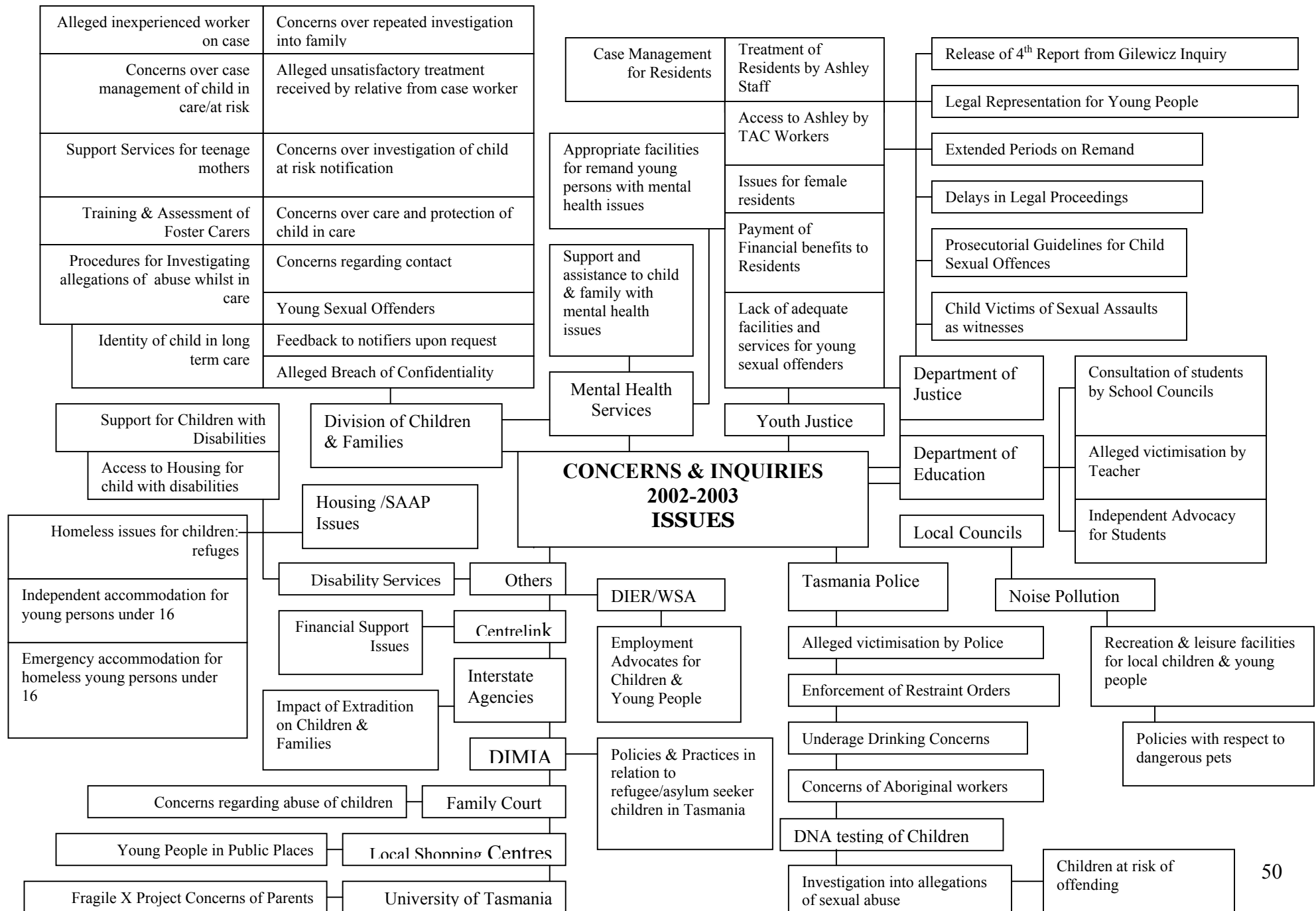
As supplied by: Mr Michael McIntyre, Acting Deputy Director- Corporate Services- Finance  
18 July, 2003.



**APPENDIX 2 CONCERNS AND INQUIRIES RECEIVED 2002-2003**

This year we have continued with assisting those who contact us with respect to Issues related to the health, welfare, care, protection and development of children. Once again this year the Chart shows that by far the main issues are with the Division of Children and families.







**APPENDIX 3. ASHLEY FLOW CHART (DRAFT)**

**COMPLAINTS BY RESIDENTS AT ASHLEY**

**COMPLAINTS IN RELATION TO TREATMENT BY STAFF**

If you have a complaint in relation to the standard of care, accommodation or treatment by staff members at Ashley, including allegations of victimisation etc, Ashley has certain procedures for dealing with complaints, or grievances by residents.

You should speak to the Ashley Manager, or a staff member, and they will be able to let you know how to go about making the complaint on a form that is available.

**ASHLEY GRIEVANCE PROCEDURES**

The first point of call is the KEY WORKER, who will take your grievance to the TEAM LEADER on duty.

The Team Leader will report to the CENTRE SUPPORT TEAM, which may refer the grievance to the MANAGER.

The Manager may refer the incident to Tasmania Police or to the Division of Children & Families.

**DIVISION OF CHILDREN & FAMILIES**

**POLICE**

**ASHLEY DIVERSIONARY CONFERENCE**

**IF YOU FEEL THAT YOUR COMPLAINT HAS NOT BEEN ADDRESSED SATISFACTORILY, OR IF YOU CONTINUE TO HAVE CONCERNS**

**OMBUDSMAN**

Ms Jan O'Grady  
Phone: 6233 6217

The Ombudsman is responsible for resolving complaints arising from administrative action by people such as Ashley staff and management.

**COMPLAINTS IN RELATION TO TREATMENT BY OTHER RESIDENTS**

If you have a complaint in relation to another resident at Ashley, such as bullying, victimisation, assault, etc, **you should speak to a staff member at Ashley that you can talk to.**

Your option are:

- contact with the Police
- contact with the Division of Children & Families
- an Ashley diversionary conference

