REPORT OF CHILD MALTREATMENT WORKSHOP

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Important document

This comprehensive and important document has now been released for general reading and debate.

Child maltreatment was first recognized as a health problem in Victoria in the early 1960's and several Committees of Investigation have met since that time to study the subject. This Report is the result of the latest of these, a Workshop, which commenced following a 2 day seminar in February 1975. At the Seminar there were more than 100 people who shared an interest in child maltreatment. They were drawn from many sections of the community — doctors, lawyers, social workers, teachers, sociologists, nurses, police welfare officers, psychiatrists, kindergarten teachers and voluntary groups. The Workshop itself was set up in June 1975 and addressed itself to five main topics —

(i) To examine professional and community attitudes to child maltreatment and to assess methods of achieving (a) professional understanding and expertise, and (b) community awareness and action.

(ii) To determine the need for preventive services and how these may be developed.

(iii) To examine and evaluate methods of assessment, management and treatment and to recommend alternative methods.

(iv) To make a study of socio-cultural influences in relation to child maltreatment.

(v) To study the law in relation to child maltreatment and to make recommendations regarding its revision.

Participants selected the group they wished to work in according to its topic. Each group met regularly ultimately producing its own report, and these reports were presented to the whole group for discussion. The final report evolved from these discussions. Thus this Report is a consensus of opinion of more than 100 people.

Consensus achieved

Consensus was achieved through two main processes —

1. discussion — often heated — through which developed an understanding of the many facets of the subject of child maltreatment, each equally important and with its own urgencies for change.

2. greater insight into each participant's own attitude to child maltreatment, and a greater awareness of the manner in which this could intrude on his/her opinions.

Core value

The core value of this Report is encompassed in Gil's Statement — "Every child, despite his individual differences and uniqueness is to be considered of equal intrinsic worth and hence should be entitled to equal social, economic, civil and political rights, so that he may fully realize his inherent potential and share equally in life, liberty and the pursuit of happiness".

The recommendations of the Workshop concentrate on the relatively more visible forms of maltreatment (e.g. severe physical



non-accidental injury, malnutrition, gross emotional deprivation or injury) with the following aims —

(a) to foster an environment in which development is maximised and not impeded.

(b) to redefine the rights of children and to foster the fulfilment of their developmental needs.

(c) to handle child maltreatment as far as possible as a social and psychological problem to be tackled by psychological welfare and social measures rather than as criminal behaviour requiring prosecution, court action and punishment of an offender.

(d) to provide resources to help children whose development has been impeded.

In more practical terms these recommendations may be grouped into educational, preventative-therapeutic and legal-reformist.

A. Educational

Community awareness of child maltreatment is increasing, but to date, has shown little responsibility towards its prevention or treatment. This is no doubt the result of the old attitude towards children, where they are regarded as the property of their parents, and as such, beyond the reach of the community as a whole. The community is becoming more involved in child care services and demanding certain standards in such care, and it is hoped that this involvement will extend to all children. To increase community awareness still further, the Report recommends the use of mass media to distribute such information and also to indicate possible causes of action to people who are in need of help, or who see others who may be in need of help. The Report also stresses the multi-cultural nature of our society, and the need for such programmes to be displayed in the ethnic press and radio.

It is suggested that a booklet should be prepared and available to all members of the community. This booklet should contain information on child maltreatment and indicate methods of management and where services are available.

Cultural toleration

In our society there is a general cultural toleration of physical force in child-rearing and a fairly widespread lack of knowledge and understanding of human relationships, parenting, child development and the process of living in a society. Educational programmes for children, adolescents, adults and special groups, in such subjects as human relationships, family life, its responsibilities and privileges, and human development, are recommended in the belief that they would more adequately prepare people for interpersonal relationships after puberty and in their future roles as parents. In addition, expectant parents should be afforded the opportunity for discussion of the physical and emotional changes and role changes which accompany pregnancy and parenthood. Such opportunities should be made available at maternity hospitals, prenatal clinics and infant welfare centres, and medical practitioners should be encouraged to refer prospective parents for teaching at suitable centres.

It is important that all these educational programmes be properly planned and developed using the wide range of educational institutions already active in this field, and that as courses are set up they should involve teachers specially prepared for this kind of work. Further continuing education programmes need to be arranged for all persons working with families, and available through suitable educational institutions, such as Colleges of Advanced Education, Royal Australian College of General Practitioners.

Research

Research programmes need to be set up to broaden our understanding of child maltreatment, its nature, its management and the means of providing the type of environment in which it will not occur. Ideally a cross cultural study could isolate the factors in our own culture which seem to promote maltreating behavior. A project is recommended in the Report, and is aimed at studying Child Rearing Attitudes and Practices.

B. Preventive — Therapeutic

Education to develop understanding and knowledge must be accompanied by a wide variety of support services. Currently in the community there is a variety of services which have sprung up without any plan. Consequently some types of service are more readily available than others and some communities are relatively well off in comparison with others. This is partly related to the different levels of service provision — statutory and non-governmental — and whilst there is a type of inter-dependent relationship between them they both work



relatively independently. This system needs review with documentation of available resources, and any new plan for service delivery needs to be an integration and rationalisation of existing services.

Serious lack of communication exists between the various systems concerned with defining, treating and preventing child maltreatment. It is extremely important that meaningful channels of communication be opened up between the various government departments and other agencies such as the Children's Protection Society, which have responsibilities for the care and well being of children. The current fragmented approach to this is unacceptable.

Recommendations

The recommendations of this Report stress the multi-dimensional nature of child maltreatment and the need for a multi-disciplinary approach to its prevention and treatment. To co-ordinate and integrate this work, a Special Division of Child Maltreatment, needs to be established. This Division would have the responsibility for ensuring that the recommendations of the Report are in fact carried out. The Report suggests that this Division be within the Health Department as for more than ten years it has demonstrated its concern about Child Maltreatment by initiating Committees of Investigation, Research Projects and now the Workship which has produced this Report. As the recommendations within the Report cover a wide range of services involving Health, Social Welfare, Education and Legal Departments, it is important that there be maximum co-operation between all concerned and a readiness for a sustained commitment.

The Child Maltreatment Division would be responsible for the co-ordination of services throughout the State. However, it is stressed that the provision of services should be localized with effective communication networks between local communities and appropriate regional bodies. In this Report local refers to "whatever people within the area would claim to be local". Different communities may require different types of services so structures need to be sufficiently flexible to reflect the local culture and to react to the needs of the particular community. The need is for most services to be immediately available and within the locality in which people live. Local panels drawn from the local communities should be established to co-ordinate all activities.

Prevention

On the prevention and management of child maltreatment. Existing personnel in the field, at present, including infant welfare sisters, teachers (including preschool teachers) medical practitioners, social workers and nurses, could be utilized to create interest in the area for developing resources to meet local needs. Facilities, such as local infant welfare centres, kindergartens, and schools could be used as centres from which programmes could be developed and services provided.

At the Regional level, the Report recommends the following functions —

(i) the provision of services to local areas.
(ii) the provision of a link between individual local authorities.
(iii) the development of links between local, regional and State levels.

State regional boundaries should be adopted and the following services provided in a co-ordinated overall approach — specialist medical (including paediactric) and paramedical services, psychiatric services, Social Welfare Department services, Department of Social Security Services, Education Department Services, Library and information office.

State level

At the State level, the Report recommends the establishment of a Consultative Council for Child Maltreatment. This Council would be responsible for advising the Assistant Minister for Health on the implementation of the recommendations of the Report and therefore requires adequate legislative backing.

To achieve its goals in the prevention and treatment of child maltreatment, the Child Maltreatment Divison, Regional Panels, and Local Panels, need to be well planned, well staffed and provided with adequate financial resources.

C. Legal — Reformist

Legislative action is required to implement changes outlined in this Report. In addition reforms are required to legislation governing the structures and procedures for contacting, holding, adjudicating and finally resolving the needs of the maltreated child and his/her family.



However, that legislation alone will not be effective, unless there is an associated provision of the infrastructure. The provision of those services is regarded as essential to the proper implementation of the changes proposed.

The recommendations of the Report assume that the welfare of the child is of paramount consideration to the rights of the parents or guardians where the child has been or is subject to maltreatment; and that it is necessary to establish an adequate system whereby a child suspected of being maltreated is brought to notice, is adequately assessed and appropriately treated, and that support services to the child's family are provided where necessary. The Report recommends that legislation be introduced to lay on Child Welfare Agencies and departments a positive duty to provide necessary preventive and supportive services. Such legislation would take into account the present environment of the child balanced against State alternatives.

The workshop

The Workshop considered two alternatives — a new "Child Care Bill" or amendments to existing legislation ("Amending Bill") and recommended the latter. In this maltreatment is defined to include both physical and emotional injury, and both acts of commission and omission may qualify as maltreatment. The upper age limit is 15 years. It is recommended that the manner in which courts discharge the responsibility of interpreting the above definition be kept under review by the Consultative Council.

Early detection of cases of supected maltreatment was thought to occur more readily if notification of cases remained a voluntary act. More voluntary reports would probably occur if support services and treatment ensued from such notification. All reports should be protected from disclosure and legislation should provide for immunity on the part of the reporter.

New Procedures are recommended to enable a child to be held without undue formality for 3 days during which time an assessment can be made. If a child needs to be held beyond this time, a formal protection application would need to be lodged. Such holding powers would then have a 14 day limit. Further retention of the child beyond this fourteen day period would require either parental consent, or an order by the court admitting the child to care. The holding power would only be granted to "authorized persons" who would be appointed by the Governor-in-Council, on the recommendations of the Minister from a list of names of individuals (or classes of individuals) submitted to him through the Department by the Regional or local panels. There would be no automatic appointments. Existing powers of entry should not be changed.

Adjudicative bodies

Adjudicative bodies should be regionalized and members of desciplines other than the law should be incorporated into adjudicative bodies. It is hoped that by greater consultation between police, health and welfare professionals prior to instituting a criminal prosecution against a person in connection with an instance of alleged maltreatment, the criminal law will be used selectively, and without prejudicing the rehabilitation of the family unit where this is possible.

Legal representation and interpreting services for children appearing for adjudication are recommended. An independent relationship should be established between the child and legal counsel free from externally imposed definitions of the child's interest.

Placement

With regard to placement, the Report recommends an expansion of the powers of the Children's Court, so that a child admitted to an institution or to a public hospital subject only to the consent of the Director-General of Social Welfare, in the first instance and of the appropriate hospital offices in the second. Placement should be reviewed periodically by an independent review board. This would allow for a variation of the placement order at any time.

Multidisciplinary

Finally the multidisciplinary and comprehensive nature of the recommendations within this Report emphasize the need for the closest cooperation between the many disciplines involved if the goals of this Workshop are to be realized and continuing evaluation of all programmes.

Copies of the Report may be obtaind from:

Revenue Section, Department of Health, (14th Floor), 555 Collins Street, Melbourne 3000. Price $2.00.

IN THE SUPREME COURT OF THE NORTHERN TERRITORY OF AUSTRALIA
No. AC 48 of 1975

IN THE MATTER of FREDDIE an infant

— and —

IN THE MATTER of the Adoption of Children Ordinance 1964-1969

BETWEEN:

WILLIAM FRANCIS McMILLEN and SHERYL ANNE McMILLEN

Plaintiffs

AND:

JACK ROBERT LARCOMBE Director of Child Welfare

Defendant

REASONS FOR JUDGMENT (Delivered 26 November 1976)

FORSTER J. :

The plaintiffs have applied for an order dispensing with the consent of the mother of the child Freddie to his adoption by them and for an order for adoption. I heard both applications together and am of opinion that section 10 of the Adoption of Children Ordinance requires me when dealing with both applications to regard the welfare and interest of the child as paramount.

Freddie was born on 28th September 1974 and is of mixed descent. His mother is a full blood Aboriginal native of Australia and his father was a white man. At the suggestion of counsel I viewed the child and he appeared to me to be a small, bright and cheerful baby with a light brown skin of whom the plaintiffs were obviously very fond. I gained nothing else from my view.

The first point which was argued was that in the circumstances there is no jurisdiction as the applicants have no right to make an adoption application. Section 8(1) of the Ordinance is as follows:-

> "8.-(1). The Court shall not make an order for the adoption of a child unless, at the time of the filing in the Court of the application for the order —
>
> (a) the applicant, or (in the case of joint applicants) each of the applicants was resident or domiciled in the Territory; and
>
> (b) the child was present in the Territory."

Condition (b) has been fulfilled, indeed the child has never been out of the Northern Territory since he was born at Alice Springs. The applicants are domiciled in the United States of America and although they were physically present in the Northern Territory at the relevant time and are still present and living in a house at Alice Springs, it is argued that they were not resident in the Northern Territory within the meaning which should be ascribed to that word for the purposes of section 8(1).

The facts on this topic are that the plaintiffs who are husband and wife are citizens of the United States of America. McMillen is an electronics specialist aged nearly thirty-two and is an employee of the Civil Service of the United States. He came to Alice Springs pursuant to a contract of employment for a period of two years from the 4th May 1974. This two year term was later extended by a further year. At the end of that time the Civil Service is no longer obliged by the contract to continue to employ McMillen in Alice Springs and McMillen and his wife intend to return to the United States where he confidently expects that he will continue to be employed by the Civil Service. The intention of Mr. and Mrs. McMillen is to live in the city of Columbia in the State of Maryland. Neither McMillen nor his wife is prepared to give up their United States citizenship and as a consequence are not prepared to settle in Australia. Their present intentions are, as I have said, to return to the United States and thereafter to accept any suitable overseas assignment which may be offered. McMillen would regard an assignment to Alice Springs at some time in the future as suitable.

I have been referred to a number of authorities and in particular to **Re Adoption Application No. 52/1951** 1951 2 A.E.R. 931. I accept with respect the ratio for decision by Harman J. He says that the question whether a person is resident or not is a question of fact and also says that residence must be more than mere presence even though it may be said that any person present in a place overnight resides there in the sense that he lives there for that night. I observe, incidentally, that a contrast is drawn in section 8(1) itself between residence and presence. I agree that some degree of permanence is necessary and that the fact that an applicant plans to leave the jurisdiction after the adoption order is made may have a considerable effect on the merits of the application

but has little if any relevance to the question of jurisdiction. The applicants in the present case have occupied a house in Alice Springs for more than two years and have no other house in the United States or elsewhere. If they are not resident in the Northern Territory they are resident nowhere. If, as I accept, residence is a matter of fact, the consideration of other cases dealing with the word in other contexts is of little assistance. **Re G (an infant)** 1968 3 N.S.W.R. 483 has at first sight a certain resemblance to the present case in that the applicants, an American couple, were in Australia for a finite term. Myers J. held that they were not proved to be residents in New South Wales because notwithstanding that they occupied a flat in Sydney there was no evidence that they were resident in New South Wales rather than in Australia as a whole. The judgment suggests that the learned Judge might have found otherwise if the applicants had said that they were resident in New South Wales. The question of residence was only one of the grounds upon which the application was refused but the learned Judge gave the applicants twenty-one days in which to make a further application which suggests, inter alia, that if the applicants brought forward evidence that they were resident in New South Wales rather than in Australia he might consider that he had jurisdiction. It seems to me that the matter is not only clearly one of fact but whether or not residence for the purpose of the Ordinance is established must be a matter of degree. Overnight presence is hardly enough but if the presence were for a fairly lengthy finite term when neither earning nor living in any other way in a residence elsewhere it may well be enough. "Residence denotes some degree of permanence. It does not necessarily mean that the applicant has a home of his own but that he has a settled headquarters in this country." **(Re Adoption Application No. 52/1951** (supra) @ page 936).

I conclude that the plaintiffs' presence in the Northern Territory has a sufficient degree of permanence to enable me to find that they are resident in the Territory and thus jurisdiction to deal with their application is established. I note in passing that the presence of many people in the Northern Territory is temporary in the sense that they are here for some finite term whether of two years or three years or more and many others are even more transient. Whether any such person is resident must depend on the facts of each particular case but if the contention argued for the natural mother of the child were adopted many people who are at present in the Northern Territory would not be resident there.

The two substantial questions are whether the mother's consent should be dispensed with and, if so, whether this particular adoption order should be made. As I have said, the questions are governed by section 10 of the Ordinance and in each the "welfare and interests of the child concerned should be regarded as the paramount consideration."

The grounds upon which consent may be dispensed with are set out in section 27(1) and I set them out here.

> "27.-(1). The Court may, by order, dispense with the consent of a person (other than the child) to the adoption of a child where the Court is satisfied that —
>
> (a) after reasonable inquiry, that person cannot be found;
>
> (b) that person is in such a physical or mental condition as not to be capable of properly considering the question whether he should give his consent;
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> (c) that person has abandoned, deserted or persistently neglected or ill-treated the child;
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> (d) that person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
>
> (e) there are any other special circumstances by reason of which the consent may properly be dispensed with."

Sub-section (a) does not apply in this case nor is it suggested that sub-section (b) applies. Sub-section (c) may apply and it is alleged that sub-section (d) does apply. Under sub-section (3) it is argued that the benefit to Freddie of being adopted by the McMillens constitutes a special circumstance.

As to grounds (c) and (d) it is necessary to set out a brief history of Freddie and his relationship with his mother Anupa. He was born on 28th September 1974 prior to his arrival with Anupa at the Alice Springs Hospital. He was a small baby. He was discharged from hospital with Anupa on 18th October 1974. He was re-admitted to the hospital on 11th November 1974 as a result of Anupa's bringing him there. He was suffering from jitteriness and poor weight gain. He was discharged after treatment on 19th November 1974. He was re-admitted on 21st January 1975 suffering from under-nutrition and discharged on 2nd February 1975. This admission also resulted from Anupa's action in bringing him in. He had a further period of hospitilization from 28th February 1975 to 29th April 1975 suffering again from under-nutrition. He was quite apparently doing poorly and at the time Anupa was said to be drinking alcohol to excess. Sister Frances said that Anupa obviously loved Freddie and cared for him adequately when sober. It appears that after Freddie's discharge from hospital on 29th April 1975 he was admitted to the Welfare Receiving Home in Alice Springs.

On 8th and 9th May 1975 there occurred a number of things which reflected little credit on the Welfare Branch or the Children's Court in Alice Springs. On 8th May 1975 an application was made by a Welfare Officer to the Southern District Children's Court for a declaration that Freddie be declared a neglected child. The application was taken out on 8th May and served upon Anupa on that day. Freddie, as I have said, was in the Welfare Receiving Home and Anupa was in hospital with a broken leg. The application stated on its face that it was for hearing at 2 p.m. on 9th May. There was no possibility of Anupa getting out of hospital to attend the hearing and the declaration sought was made ex parte. Mrs Lane, the welfare officer concerned, conceded in evidence that she knew Anupa was in hospital and therefore had no way of attending the court. She also said that the Magistrate concerned knew that Anupa was in hospital but this does not appear from the Children's Court file which was tendered. However this may be, to give one day's notice only of a hearing with such important possible results seems to me quite inadequate and to give such notice to an illiterate full-blood tribal Aboriginal woman knowing that even if she understood the notice she was physically unable to do anything about it seems to be to constitute a denial of justice of a particularly serious kind. No reason was given by Mrs Lane for acting with such haste and I am unable to find one. The Magistrate made the order sought and committed Freddie to the care of the Director of Child Welfare. Anupa remained in hospital until 15th May on which day Freddie was given to the McMillens as a foster child. Thereafter for a period of some months Anupa did what she could to find the child. She went to the Receiving Home on a number of occasions where she was told nothing. She asked Sister Frances on a number of occasions and Sister Frances was not able to find out for her. She may or may not have asked Mrs. Lane but I am inclined to think that she did notwithstanding Mrs. Lane's denial. But whether rightly or wrongly, because of this and a previous experience to do with a child Charlie, she regards Mrs. Lane as a "stealer of children". In view of this attitude if she did not ask Mrs. Lane it is hardly to be wondered at. It is easy enough after the event to say that Anupa should have insisted that she be told where Freddie was and persisted in enquiring until she found out but it is important to remember that I am dealing with an illiterate Aboriginal woman who has been at odds with white authority figures in the past, and bearing this in mind I am satisfied that Anupa did all she reasonably could to discover where Freddie was after she came out of hospital.

After some months in which occurred further attempts to find Freddie, Anupa went to Docker River where her parents live and which is her parents' country, and her two elder children, two girls, live there with her parents. For five months now she has been living at Kikinkurra, an outstation approximately ten miles from Docker River. She lives in a tribal marriage relationship with Ronnie Nguri who is also a full-blood Pitjantjantjara. She is part of an extended family group which includes her parents, her two daughters and various other relatives of hers and of Ronnie's. Mr. Ashe, the community adviser at Docker River, who vists Kikinkurra at least weekly, says that Anupa and Ronnie are living in a stable relationship and that the extended family appears to be a stable one. Other evidence satisfies me that Anupa would have support not only from Ronnie and her parents but from the members of the extended family.

Since the unfortunate events of May 1975 Anupa has been prevented by forces quite beyond her control from discharging her obligations as a parent. In the circumstances I am quite unable to find that the ground in section 27(1)(d) is made out.

There is no admissible evidence tending to show that Anupa either abandoned or deserted Freddie in terms of Section 27(1)(c) and there remains only the question of neglect. It is proved that Freddie did not do well as a young baby and suffered from feeding problems. I also accept that prior to his birth and for some time thereafter Anupa drank more liquor than was good for her and that she was, not infrequently, drunk. Freddie has done better since he has been with the McMillens but he is still an undersized baby and is retarded to the extent of approximately three months. It may be that Anupa's conduct contributed to his poor progress but it is by no means satisfactorily proved. I cannot be satisfied that there is an adequate causal link between his poor progress and any conduct of Anupa's. Bearing in mind that Freddie's attendances at hospital were largely as a result of Anupa's actions I am unable to find that she persistently neglected Freddie whether one adopts an objective or a subjective standard. She was no doubt not the best mother in the world and her conduct during the seven months between his birth and the time that he was taken away from her by court proceedings, which I have found to be improper, may have fallen short of ideal standards but I am satisfied that she loved Freddie and looked after him as well as she was able. If Anupa did neglect Freddie during the period of seven months it is not established that her neglect was persistent and Sister Frances, whom I accept, attributes this neglect to Anupa's drinking and says that Anupa cared for him properly when sober. She now does not drink at all and has not done for a year and moreover although drink is sometimes smuggled into Docker River none has ever been known at Kikinkurra. She has been at Docker River when there was liquor available and has not taken any.

I have no ground for dispensing with consent and severing permanently the tie between Anupa and Freddie and between Freddie and his Aboriginal connections unless the alleged advantages to him of being adopted by the McMillens amount to special circumstances. Let me say at once that I found the McMillens to be admirable people and I am sure that they are very fond of Freddie. They are intelligent thoughtful people who are conscious of the potential problems of a trans-racial adoption. Even though if an order is made Freddie will live with them in the United States and probably in places overseas, they are determined so far as they are able that they will make Freddie aware of and proud of his Aboriginal origins, but they admit that circumstances will probably not permit him to have any contact with his mother or other Aboriginal relatives. I accept Sister Frances when she says, "It is considered that all adoptive children at some stage or other have a problem of identity. This is compounded when that child is of different ethnic origins from the adoptive parents and therefore it is important that the child should have access to people of his or her ethnic origin." It is possible that the McMillens may accept a posting back to Australia at some time and it is also possible that when he is old enough to travel by himself Freddie could come to Alice Springs to see his mother and relatives if there were enough money to finance the trip. These things are possible but are by no means shown to be likely. The evidence of Sister Frances and to a lesser extent of Dr. Sutherland satisfies me that as Freddie grows older in a white society he is very likely to undergo an identity crisis when he realises that he is different in appearance to the people who surround him. Quite apart from any racial problems which he may encounter in the United States he is likely to encounter problems arising within himself because of the very fact that his physical appearance is different. Whether this be so or not the evidence satisfies me that it is likely that as he grows through puberty and beyond he is likely to regard himself as a half black child rather than half white, both of which descriptions are literally true. Why this should be I do not quite understand but the evidence satisfies me that it is so. I have no doubt that in a material way the McMillens would provide for Freddie all the things he is likely to need and that they would also offer him love and security within their family but what they will not be able to do is to satisfy his probable wish to make contact with Aboriginal people in general and his own relatives in particular. As I have said, Freddie is unfortunately slightly retarded. Mrs. McMillen is a trained teacher with experience in dealing with handicapped children so that one would expect that she would be better equipped to deal with this aspect of Freddie than many other parents.

What can Anupa offer Freddie First, there is the love of his natural mother and an extended family in which as he grows older, he will probably feel more at home than with a white family. If Anupa has him I am satisfied that he will be treated as an Aborigine by the Pitjantjantjara people with whom he will live and will become a fully initiated man. The evidence of Ronnie Nguri and Mr. Capp satisfies me on this point. The living conditions which Freddie will enjoy with Anupa would, by European standards, be considerably less satisfactory than those offered by the McMillens. However, by Aboriginal standards, they are perfectly adequate and indeed better than conditions enjoyed by many Aboriginal people. He would be housed in a tent, there is an adequate water supply and an adequate supply of food both European and bush tucker. Dr. Sutherland is of the opinion that provided he is loved and cared for Freddie will do well living in Aboriginal conditions and living on a mixture of European and Aboriginal food. An important point made by Dr. Sutherland is that there are less pressures upon people living in an Aboriginal community than a white community and that for this reason the fact that Freddie is and will probably remain somewhat retarded is likely to be less of a disability to him in an Aboriginal community than if he were living in a white community. It is my view that the pressures of white society are likely to affect Freddie however loving and protective the McMillens may be and will compound the identity problems which he will face later in life. There is a school at Docker River which Freddie could attend if he goes to live with Anupa and where he would be among people like him. A doctor calls monthly at Docker River and there is a new hospital erected there awaiting equipment. Anupa is in a stable tribal marriage relationship with Ronnie Nguri. He has undertaken to me to look after Freddie and insofar as it is his responsibility to see that his uncles and other people see him through his initiation. Ronnie is a sober, hard-working man who is normally employed by the Docker River Housing Association earning approximately $260 per month. He is not employed at present because the operation of the housing association has temporarily ceased awaiting the appointment of a new supervisor and the provision of funds. Ronnie does not drink at all.

I do not think that what is offered by the McMillens in a material, emotional and spiritual way is for Freddie superior at all to what Anupa can offer and it follows that I do not think the benefits which Freddie might receive from adoption by the McMillens amount to a special circumstance which would justify me in dispensing with Anupa's consent.

I sum up by saying that whereas Anupa may have been guilty of some neglect of Freddie at a time when she was living as a fringe

dweller in Alice Springs and drinking too much, I am unable to find that she was guilty of persistent neglect. None of the other grounds in section 27 is made out and the application to dispense with consent therefore fails. It follows that the application for adoption by the McMillens also fails. This is hard for the McMillens who, as I have said, appear to me to be admirable people. Neither the result nor anything I have said should be taken as criticism of any sort of either of them.

I have been critical of some actions of the Department of Social Welfare. It seems to me that ordinary concepts of justice require that if an allegation is made that a child is under unfit guardianship then the mother or other guardian must be given adequate notice of the Children's Court hearing at which the link between mother and child is likely to be severed, if not permanently, then for an appreciable time. So far as Aboriginal women are concerned, time and trouble must be taken to ensure that the mother understands what is alleged against her and what the result of the proceedings may be. The assistance of the Aboriginal Legal Aid Service should be enlisted for this purpose. A further point which arose in these proceedings is that the Welfare Department had made no investigation into Anupa's present circumstances and were not in a position to confirm or deny the evidence given on this topic. I would have found it very helpful to have a report from a welfare officer in this case but, of course, I have the evidence of the community adviser whom I accepted as an honest objective witness. In future I think that the Department should ensure that it has up-to-date information for the Court in any contested custody application. The fact that an order was made in May 1975 is interesting but little more since I do not know the basis for the making of the order and in any event only one side of the position was put before the Magistrate.

I should also say that it is my view that even if Anupa were shown to have persistently neglected the child some eighteen months ago this would not necessarily justify the making of an order dispensing with her consent if I were satisfied as I am that given an opportunity to look after Freddie she would not neglect him again.

I am asked by counsel for Anupa to make an order pursuant to section 17 of the Ordinance that Freddie be returned to her care and control. I can see no reason in the present circumstances why such an order should not be made and I therefore order accordingly.

A COMMENT ON THE MATTER OF FREDDIE:

J. Neville Turner
Senior Lecturer-In-Law,
Monash University,
(Hon. Legal Adviser,
Children's Welfare
Association of Victoria)

Reported cases of adoption are rare in Australia, possibly because generally the Courts merely have the function of rubber-stamping a **fait accompli**, arranged, sanctioned and usually put into effect long beforehand. It is therefore refreshing to come across this well considered and humane judgement of Forster J. And although each adoption case is unique, and it is dangerous to rely over-much on previous cases as precedents, this case is of considerable general interest.

There are two very important points discussed in the case, and several **obiter dicta** of significance to lawyers, adoption agencies and others dealing with adoptions, throughout Australia. The legislation under review in this case is similar in all States, and thus the decision is relevant throughout Australia

The first point is the question of jurisdiction, that is, whether the court has power to make an adoption order at all. Now, jurisdiction in adoption is based on:—

(1) either domicile or residence of the potential adoptive parents, and

(2) physical presence of the child in the particular State.

Some readers may have difficulty in understanding the distinction bet-