CHILD PROTECTION POLICY IN VICTORIA

PART 1

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INTRODUCTION

The development of an explicit, formally enunciated, child protection policy in Victoria is only a recent occurence. This paper will trace the development of this policy from the sixties of this century until the present time. [Tierney (1963) made a comprehensive analysis of the development of child welfare policy and administration in Victoria up to the sixties.] Although historically, and currently, the Health Commission (formerly the Department of Health) has influenced the development of child protection policy, this analysis focuses particularly on the policies and practices of the Community Welfare Services Department as well as the relevant legislation. No attempt is made to analyse the policies and legislation administered by other relevant departments such as the Health Commission, Education Department, Law Department and the Police and Emergency Services Department. The policies of the Community Welfare Services Department are considered to be of greater relevance because of its role in administering the relevant welfare legislation, and the increasingly important role it has assumed in the supervision and co-ordination of various agencies involved in child protection.

The existing child protection policy of the Victorian government has developed as part of the political processes of this State and includes the influence of pressure group activities. In the description, which follows, the latter activities are at times referred to, but no attempt is made to evaluate the reasons for the development of particular policies or the role of various pressure groups in these activities.

What follows is an analysis of the historical context of the current policy, then a description is given of the evolution of an official child protection policy in the decade from 1968-1978. In a forthcoming article, the current policy will be descri' and then contrasted with the policies which prevailed in the sixties.

THE HISTORICAL CONTEXT

The current structure of the Community Welfare Services Department dates from 1961 when the Victorian Government's existing care and correctional functions for children and youth were combined with its adult correctional services. Prior to 1961 these functions were administered under the auspices of the Children's Welfare Department. At the time, the Department, then known as the Social Welfare Department, established four divisions (Family Welfare, Youth Welfare, Probation and Parole and Prisons) through which the existing functions could continue to be provided. In addition, a Training, and Research and Statistics Division was established to enable staff training and the collection of information to be improved. A seventh division, Regional Services, was established administratively in 1972 to enable the Department to change from a basically centralized to a regional form of operation. In 1961 it was decided that the Victorian Social Welfare Department's role in child welfare would be a "caring, guardian" role rather than an "interventive role". (Personal communication to the writer by a senior Departmental administrator, December 1978.)

This position differs from most other States in Australia where staff in State Welfare Departments investigate complaints concerning child maltreatment and are vested with powers to apprehend children and to change their guardians as unfit or neglectful. There has also historically been a strong emphasis on subsidization of the voluntary sector in the child welfare field. This policy has been described by one Departmental administrator as being based on notions of a "desirable pluralism and diversity in the welfare system". (Personal communication to the writer, December 1978.)

The origins of the Victorian Government's child protection policy date from the publication of articles by Bialestock (1966) and Birrell and Birrell (1966) in the *Australian Medical Journal*. These followed an earlier article by Wurfel and Maxwell (1965) in the *Australian Paediatric Journal* reporting on child maltreatment cases in South Australia. Bialestock reported on a comprehensive study of the situation of neglected babies under the age of two years. She compared the physical, mental and emotional states of over fifty babies admitted to Allambie, the State Reception Centre, with the records of babies attending a creche in an inner suburban working class Infant Welfare Centre. The findings showed that more than two thirds of the babies admitted to Allambie suffered from "failure to thrive", and that emotional deprivation and a history of physical trauma were not uncommon. As part of her research Bialestock visited ten

*This paper is the first of two articles describing the development of child protective policy in the State of Victoria during the past twenty years, Part I describes the historical context and developments which led to the current policy. Part II, to be published subsequently, describes the current governmental policy.

baby homes in Victoria and extracted information from records about the social and family backgrounds of reception centre babies. In her conclusion she advocated a number of reforms, complaining particularly about staff shortages and overcrowded accommodation, as well as the lack of minimum standards for staff and buildings in baby homes. She advocated improvement in the training of Infant Welfare Sisters as well as suggesting that they should have more time for home visiting to enable them to detect child maltreatment.

Birrell and Birrell (1966), in the same edition of the journal documented eight cases of serious physical and emotional abuse and they compared their findings with overseas research. They cited two cases where children had died as a result of further abuse inflicted following their discharge to parental care from hospital. They expressed particular concern about the disastrous results of the philosophy that "a bad home is better than no home or an institution". They recommended the introduction of mandatory reporting legislation and for reports to be made to a central agency which would be ". . . charged with ensuring that no further harm befalls the child". The Birrells endorsed Bialestock's suggestion that Infant Welfare Sisters could perform similar roles to health visitors in the United Kingdom.

In response to these allegations, the Chief Secretary and Minister of Health set up an inter-departmental committee to investigate:

> "**(a)** whether the allegations made in the articles were based on fact, **(b)** whether any administrative charges or amendments to the law were required."

(See Committee of Investigation into Allegations of Neglect and Maltreatment of Young Children, 1967.)

The Committee was convened by the Director General of Social Welfare and included representatives of the Police and Health Departments. In its report, which was presented in December 1967, the Committee made a number of recommendations endorsing allegations made by Bialestock concerning staffing and accommodation at Allambie, and standards of Baby Homes. The principal recommendations concerned research into the need for low rental housing, legislative changes concerning children being left unattended and the introduction of a system of voluntary reporting of child maltreatment by medical practitioners on a confidential basis to the Commissioner of Public Health. Following the presentation of the report, a circular and notification forms were sent in March 1968, to all registered Medical Practitioners in Victoria. In the circular which was sent out, the criteria for notification were as follows:

"Any child under the age of fifteen years who the doctor has

reasonable cause to believe is likely to suffer or has suffered disability or injury from physical or emotional abuse, maltreatment or neglect, inflicted by other than accidental means."

Birrell and Birrell (1968) published a further article in the *Australian Medical Journal* in which they presented case material on forty-two children seen at the Royal Children's Hospital between April 1964 and September 1966. They documented physical, radiological and social findings which they referred to as the "maltreatment syndrome". They used these more comprehensive data to plead for a more integrated community and professional response to child maltreatment. In particular, they emphasised the importance of a central reporting agency and the mandatory reporting of suspected abuse by physicians who, they said, should be given immunity from legal suit. Other recommendations were to empower a professional team who had specialized knowledge of the problem with the right to remove "at risk children" from their homes as well as to provide improved education for "post-natal" nursing sisters, sisters working in "premature nurseries", and health sisters, in the early detection of maltreatment.

The Minister of Health reconvened the Committee in December 1968 to enquire into the truth of the allegations made in this later article and to report on action which had been taken concerning the recommendations contained in its First Report. In their Second Report (1969), the Committee reported that although they did not dispute the authenticity of the Birrells' allegations, they had been unable to verify their truth as the Board of Management of the Children's Hospital would not make their records available for examination. They further reported that only three of the thirteen recommendations had been carried out, one of which was the establishment of a voluntary reporting system. (This had resulted in thirty-one notifications being made up to 19/12/68.) It was noted that no notifications had been received from the Children's Hospital although retrospective figures were supplied on request. Out of the other recommendations, on five there had been no action, and on a further five some action had been taken.

The Committee saw fit to comment on some broader issues which were not specifically included in the terms of reference, particularly referring to the recommendations made in the Birrells' 1968 article. They considered mandatory reporting to be unnecessary in Australia, commenting that in their view much of the legislation in the United States was governed by hysteria and an urge to punish cruel parents. They also said that they deplored the publicity given to estimates of "at risk" children which was often misapplied. The Committee placed a lot of emphasis on rights conferred by the legal system. For example, in response to the Birrells' suggestion of empowering a specialist team with the power to remove "at risk children" from their parents, they said:

> "The proper authority to decide what should be done, when an offence is committed, is a court. The Committee does not agree that some team, whether medical only or medical and social welfare, should be given the power to remove children from their parents."

They further commented that in their view, the medical profession should be able to persuade parents to keep their children in hospital for any necessary investigations into "child abuse". In particular, they deplored the loose use of the term "at risk", arguing that "all children are at some risk, but quite a small percentage actually suffer cruelty". The continuation of a voluntary reporting system — with a central registry — was advocated as a best means of assessing the true nature of the problem. In addition it was recommended that a pilot research project be established to conduct multi-disciplinary research into the problem.

Bialestock and the Birrells, to a lesser extent, had stressed the need for prevention and education to protect children. Bialestock, for instance, had linked child neglect with inadequate housing provisions for low income families. The Victorian Government's response to these allegations was a reactive legalistic one, which was reflected in the narrowly conceived terms of reference of the Committees of Investigation, and the acceptance of their recommendations. An emphasis on "rights", conferred by the legal system, rather than "needs", which may arise from inequality, comes out strongly in the Second Report of the Committee of Investigation (1969). This can be seen in the following statement of the Report:

> "The Committee believes the existing laws in this State are adequate to ensure protection of children and that they do provide for the removal of children from their parents."

This judicial orientation was reflected in the service delivery of the Department of Social Welfare which was based on a rescue model of child welfare. The latter was evident in a highly centralized form of service delivery, and the restriction of the role of the Social Welfare Department (now the Community Welfare Services Department), in child protection, to a post court "caring and guardian" role.

THE EVOLUTIONARY PERIOD

During the early seventies certain developments occurred which contributed to a change in emphasis in child protection policy. A significant development was the regionalization programme of the Department for Community Welfare Services (then called the Social Welfare Department) which commenced in 1972. At this time also, the Department received an influx of trained social work personnel into its staff ranks. This influx, particularly at a high hierarchical level, could have contributed to the change of emphasis.

The other significant development was the setting up of a pilot assessment research project into child maltreatment at the Royal Children's Hospital. At this time also, the Health Commission sponsored a large public seminar on child maltreatment which led to the formation of the Child Maltreatment Workshop in June 1975. The Workshop acted as a catalyst for policy development by forcing the government to evaluate its proposals, some of which were contrary to existing policies and developments.

The aims of the Workshop were to:

> "**(a)** develop a programme to bring about attitudinal change which would lead to appropriate approaches to the prevention of child maltreatment,
> **(b)** the development of programmes for treatment and management."

(See Report of the Child Maltreatment Workshop, 1976) Workshop participants, from a number of disciplines, were organized in six groups. The final report was submitted to government authorities in December 1976.

At the time of the Workshop the Victorian Government lacked a coherent, specific child protection policy. Implicitly child protection was seen as belonging to the "normal" fabric of child and family welfare services. (Personal communication, senior Department administrator, December 1978.) These policies were expressed legislatively in the Social Welfare Act (1970) and the Children's Court Act (1973). The Social Welfare Act (1970) outlines the functions of the Social Welfare Department. The Children's Court Act (1973) sets out the structure, jurisdiction and powers of operation of the Children's Court.

Section 31 of the Social Welfare Act defined the circumstances in which a child could be deemed to be in need of care and protection — including a number of vagrancy situations such as "begging", "associating with prostitutes", "being exposed to moral danger" or likely to lapse into a career of vice or crime, or "found wandering". The remaining sub-headings encompassed neglect situations such as "insufficient or proper food, nursing, clothing" or "ill-treated" or "exposed" or "being in the care of a person unfit by reason of his conduct or habits or incapable by reason of his health to care for a child". Under the Social Welfare Act a "child" meant a person under the age of fifteen years, and a "young person" (except where otherwise expressly provided for) meant a person of, or over the age of, fifteen years and under the age of twenty-one years.

The standard of proof required in a "care and protection" application was merely to the satisfaction of the Court. There was no prohibition on the admission of hearsay evidence and no control of relevance. Two legal forms were part of the Care and Protection application. The first, the protection application, was the form completed by the authorized person who had found a child in a place or situation enumerated in Section 31. Section 32(4) provided that any child or young person who was apprehended could be taken to the nearest Children's Reception Centre if under the age of fifteen and could be placed with some respectable person or persons as provided in Section 25 of the Children's Court Act if over fifteen years but under the age of seventeen years.

Under Section 32(3), once the child or young person was apprehended the authorized person was required to make application to the Children's Court for a Protection Order. Section 21(1) stipulated that where a child was apprehended as in need of care and protection, the case should be taken before a Children's Court within twenty-four hours. If no convenient Children's Court was sitting within that time the child was

to be taken before a Justice or Magistrate. The powers of disposition open to the Children's Court were of three main kinds — it could either adjourn the case for up to two years, or subject the family to a supervision order, or admit the child to the care of the Social Welfare Department.

The Report of the Child Maltreatment Workshop (1976) makes a number of criticisms of this legal framework. A significant criticism was that the Court did not have a statutory obligation to balance the current environment of the child against State provided insitutional alternatives. The legal machinery and procedures were criticized on the grounds of their

> ". . . inappropriate, over-reliance on the police, the over drastic nature of the application, the stigma involved, the institutionalizing effect of the procedures, the mixing of maltreatment cases with child offence cases and the inhibiting effect of the law on medical, paediatric and psychiatric and social work professionals." (Carney, 1978)

The Workshop Report contained a number of recommendations, some of which involved radical changes to the existing administrative arrangements. It was proposed that the Health Department should undertake responsibility for the general co-ordination of child maltreatment programmes and that a special child maltreatment division be established within that Department. Other proposals included the establishment of authorised persons in each region to supplement the powers of the Police and the establishment of regional consultative panels. It was also proposed that the composition of the Children's Court should be reconstituted to include people other than lawyers and that there should be 'a consultative mechanism between police and welfare authorities before criminal charges were laid in child maltreatment cases.

The Report of the Child Maltreatment Workshop was not released publicly by the Minister of Health until April 1977. The State Parliamentary Labour Party in its Committee of Inquiry into the Child Maltreatment Report (1978) and "WECARE", a lobby group set up to promote action in the child protection policy area were critical of the delay in the release of the Report and the implementation of its recommendations. The official reason given for the delay was that the government was waiting for the report of the Committee on Mental Retardation, and their wish to table together that Report, the Maltreatment Report and the Child Care Services Report. (Personal communication to the writer by Convenor of the Child Maltreatment Workshop, March 1980.)

On 18/10/77 the Assistant Minister of Health announced that the Workshop's recommendations were to be the subject of discussion and consideration by the following committees:

> **(a)** A Legislation Committee to be set up by the Attorney General to advise on the Children's Court Act.
> **(b)** The Central Implementation Committee of the Committee of Inquiry into Child Care Services (1976).
> **(c)** An inter-departmental committee comprising representatives from the Department of Health and Social Welfare." (Cited in Committee of Inquiry into the Child Maltreatment Report, 1978.)

At the time of these developments the multi-disciplinary prospective study of child maltreatment (recommended by the Second Committee of Investigation into Allegations of Neglect and Maltreatment) commenced at the Royal Children's Hospital. (The pilot work for the project took the form of a study of hospital records by Price and Krupinski (1976)). The aims of this prospective research were as follows:

> "**(a)** to determine social, familial and psychological correlates of child maltreatment,
> **(b)** to search for means and methods of early detection of child maltreatment with a specific stress on recognition of those being at risk of maltreating their children,
> **(c)** to determine the value and methods of multi-disciplinary assessment for the management of suspected or recognized cases of child maltreatment." (See Bishop and Moore, 1978.)

The terms of reference of this research reflect a change of emphasis in policy from the legalistic concern with "rights", which prevailed in the sixties, to an emphasis on the professional assessment of "needs". This change in emphasis is also reflected in the regionalization programme of the Department of Community Welfare Services. A regionalization of services implies a concern with gearing services to the needs of people in a locality. This differs from a policy of centrally administered services which, by its very nature, tends to assume that there are no differences between the needs of localities and therefore assume a uniformity of service provision. In the legal sphere the machinery for the hearing of care and protection applications remained centralized and the wording and intent of the legislation still reflected the judicial approach to child protection which prevailed in the sixties. The developments which took place during the decade from 1968-1978 laid the foundations for the development of the Government's new child protection policy and the change in the legal definitions of child maltreatment at the end of the seventies.

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