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# Victoria's Protective services and the 'Interim' Fogarty Report: Is This the Right Road at Last?

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## INTRODUCTION

The history of the provision of child protection services in Victoria, and the lack thereof, is a long and complex one. Yet another twist in the tale occurred recently.

A report by Mr Justice Fogarty and Mrs Delys Sargeant, entitled **Protective Services for Children in Victoria: An Interim Report**, was released in January 1989. This report (hereinafter the Fogarty Report) was commissioned by the Victorian Government in August 1988:

"...to inquire into and advise it upon the operation of Victoria's child protection system and on measures to improve its effectiveness and efficiency."  
(The Fogarty Report, 1989: 2)

Reports such as the Fogarty Report tend to be treated with a degree of cynicism on at least two grounds. Firstly, such publications do not amount to action, although many are treated by governments and government bodies as substitutes for such. As Cobb and Elder have described, getting an issue on to the "formal agenda" does not mean there will be "remedial or corrective action" (1972: 161). This is no fault of the authors of such reports, although I have often wondered if those responsible for their preparation shouldn't be required to follow up with progress reports at six-monthly intervals informing the public what action, if any, has been taken on the recommendations.

Secondly, and more appropriately aimed at the authors themselves, authorities appoint the investigators to write the sort of report they want. A report on the reforms required in Mental Health services is likely to be rather different if critics of psychiatry, such as Szasz or Scheff, are appointed to do the job rather than a traditional Freudian.

This paper will endeavour to place the Fogarty Report in its historical context and attempt to evaluate its contribution to ensuring abused and neglected children in Victoria are protected. Publications such as the Fogarty Report can be measured in a variety of ways, but fundamentally a number of aspects must be addressed: the background to the current situation; the problems that exist; and the preferred

solutions. This article reviews the Fogarty Report using this framework.

## THE BACKGROUND TO PROTECTIVE SERVICE PROVISION IN VICTORIA

The history of child protection service provision in Victoria has been a complex and tortuous one. Much of the debate surrounding its deficiencies has occurred within the covers of this journal (see, for example, Goddard, 1979; Hiskey, 1980; Hiskey, 1981; Boss, 1985).

The Fogarty Report devotes a great deal of space, and appropriately so, to an historical analysis of the development of Victoria's child protection services. The second chapter, "Child Protection in Victoria — A History" (Fogarty, 1989: 15-47) is devoted to this topic and indeed a significant part of Chapter Four also contains historical material.

There is a sense, however, that even at this stage of the report some selectivity has been used. A number of significant events in the unfolding drama occurred in the period from late 1987 to the middle of 1988, but are not mentioned in the Fogarty Report.

The first of these events, in November 1987, was a public meeting organised by the Children's Bureau of Australia, the Children's Welfare Association of Victoria, the Save the Children Fund and the Victorian Society for the Prevention of Child Abuse and Neglect. The meeting had a number of aims, including increasing public awareness of the problems in Victoria's child protection system, allowing members of the public to express their concerns, and passing a motion for a public inquiry into child protection. In the event, the motion calling for an inquiry was lost, but the fact that more than 300 people attended made it an important step in demonstrating dissatisfaction with Victoria's protective services.

The second of these events was the publication of a **Position Statement on Child Protection Services** by the Children's Welfare Association of Victoria in February 1988. The Position Statement identified a number of grounds on which

the protective service system was failing:

1. It is failing to adequately identify, report and investigate many cases of child abuse and neglect...
2. The Child Protection System is failing to alert, educate and change community attitudes about child abuse and neglect...
3. The Child Protection System is failing to research and collect data...
4. The Child Protection System is failing to provide adequate treatment and support for children and families at risk...
5. The Child Protection System lacks effective coordination and cooperative State and Regional structures and processes...
6. The development of effective child protection services in Victoria is blocked by the inability of professionals, administrators and workers in the field to come to some common understanding about the nature of the problem...  
(CWAV Position Statement, 1988)

The position paper, like the public meeting, attracted media attention and strengthened the resolve of many that the issue of the inadequacies in Victoria's child protection system should not be allowed to die.

The third event was the publication in May 1988 by the Victorian Society for the Prevention of Child Abuse and Neglect (VicSPCAN) of a report, **Victoria's Protective Services: Dual Tracks and Double Standards** (Goddard, 1988a). This report provoked extensive media interest led by the **Sunday Observer** ("Death report shames Government" 29th May 1988), a series of articles in **The Age** ("Child abuse cases shelved" 2nd July 1988) under the heading "Our children, Our Shame", and a full report by ABC's **Four Corners** ("Victoria: State of Abuse").

In response to these events a powerful impromptu coalition involving representatives from the Royal Children's Hospital, the Children's Court, the Police Surgeon, academia, VicSPCAN and other voluntary

bodies continued to pressure the Minister for Community Services and the Government to reform protective service provision. This very powerful alliance had the attention of the media and it was apparent that the issue was having a considerable political impact on the Minister for Community Services.

None of these events are mentioned in the Fogarty Report. Passing references to "...public and media agitation..." (Fogarty Report, 1989: 41) and "...significant public media agitation during 1987 and early 1988..." (1989: 45) do not do justice to the events. Media pressure on the Government did not begin to peak until the middle of 1988. In the first five months of 1988, for example, there were six A3 pages of text devoted to child abuse and neglect in *The Age*; in the last seven months (June - December 1988) there were 40 A3 pages ("Age" Research), much of it under the logo "Our Children, Our Shame".

Why is this important? The strength of public and media opinion in mid to late 1988 should not be underestimated. *The Age* called for a Royal Commission in an Editorial and there can be no doubt that there was a great deal of pressure to change. The two major responses from the Government coincided with the media outcry. In July 1988 the then Minister for Community Services, Mr Race Matthews, announced "new measures to strengthen Victoria's child protection service". Only weeks before he had denied that there were problems. These measures included some of the demands made by the various groups campaigning for improved services: an extra \$7.2 million on the budget, 118 extra protective workers, a central register and a 24-hour service. These measures coincided with *The Age* campaign, but failed to quieten media and public concern.

The announcement that Mr Justice Fogarty was to chair a new independent statutory council and monitor "... the implementation of the major package of child protection measures..." (Media Release from the Office of the Premier of Victoria: "Senior Judge to Help Protect Children"; 1st August 1988) coincided with the investigation by *Four Corners* into the deaths of two children on supervision orders.

Failure to give due weight to the strength of public, professional and media concern at this time, and the corresponding announcements from the State Government, can lead to an assumption that the increased resources and the appointment of Mr Justice Fogarty were planned responses rather than, as a cynical observer might have remarked, hasty attempts to buy time and bury the issue

under a pile of money.

Child abuse, in all its manifestations, appears to have occurred throughout history but concern about children has to be "...reawakened periodically..." (Goddard, 1988a: 12). A large number of individuals and organisations were responsible for the periodic reawakening in Victoria in 1988. The "dynamics" of how the "agenda-building" occurred (Cobb and Elder, 1972) has always been important in the issue of child abuse.

### THE EXISTING PROBLEMS

Having dispensed with the history, the report moves on to identify what it sees as the major problems confronting the Victorian system of child protection. Chapter Three, "Some General Issues", attempts to place statutory child protection services within the child welfare services generally, warns against a too-broad view of child abuse and stresses that child protection should be a short-term emergency service (Fogarty Report, 1989: 48-55).

The following section (Chapter Four, "Dual Track System - What Model For The Future?"), effectively derails the dual track system. **The Child Welfare Practice and Legislation Review** (known as the Carney Report, 1984):

"...proposed that a 'dual track' system should be established. Thus responsibility for intervention in reported cases of maltreatment should be vested in the Department of Community Services and in the Police Department." (Carney Report, 1984: 223)

The Carney Report has been strongly criticised on a number of grounds. In this journal, in describing the Carney Report's discussion of mandatory reporting and central registers, Boss accused the Carney Committee of dealing with the issues "... with less than adequate objectivity..." and "...without adequate exploration of the issues..." (Boss, 1985: 6). According to other criticisms, the Carney Committee set the scene for "...a defective protective service, with no clear accountability and without adequate resources" (Goddard, 1988a: 55).

One of the central planks of the Carney Report, the dual track system, is demolished by the Fogarty Report:

"...it was doomed to failure from the beginning... it **has** failed, it is an unsatisfactory system... it needs to be replaced with a system of single responsibility." (Fogarty Report, 1989: 59)

The dual track system is to die, but the death will not be a simple, clean affair but rather a "gradual" affair (1989: 68)

recognising that Community Services Victoria (CSV) cannot undertake these responsibilities immediately. Three years is seen as an "appropriate" period over which to phase out the dual track system:

"Three years is in our view the appropriate period. It is achievable but emphasises the urgency of the issue (sic) and it will provide a suitable motivation for concerted action." (Fogarty Report, 1989: 69)

Other problems are identified in the following chapter. The caseload system, whereby CSV would refuse service to even the most serious case of child abuse has been described as the "... one truly unique feature..." of Victoria's services (Goddard, 1988a: 57). The Fogarty Report describes it as "... artificial and unjustifiable..." (1989: 77). The grave allegation is made that this system allowed the services to refuse almost half of the serious cases whilst accepting almost two-thirds of the less serious cases (1989: 75).

The arguments between specialist and generalist approaches to child protection are dealt with in a rather superficial fashion (Fogarty Report, 1989: 79-81), but the important point is made that both pre-Court and post-Court work should be seen as parts of the same child protection service.

The apparent good work is brought into question, however, by the following:

"... there is a tendency at times for post-court workers to retain cases longer than the protective aspect requires and for them to be preferring what is largely a broader remedial social welfare role... it is important for the integrity of the child protection system as a whole that it be seen as a short term, emergency service in both its categories." (Fogarty Report, 1989: 80)

This is an extraordinary statement. Post-Court work, i.e. the wardship and supervision orders, can never be seen as a "short-term, emergency" service. I have read and re-read this section and cannot understand what this means other than a failure on behalf of the authors to comprehend the true nature of the Department's statutory obligations to children on wardship and supervision orders.

Interestingly, apart from the lengthy chapter devoted to the history of child protection services in Victoria (reviewed above), the longest chapter is devoted to the "Statistics of the Services Provided" (Chapter Seven) in spite of the fact that "... reliable statistical information..." is not available (Fogarty Report, 1989: 95).

"The overall result is that it is impossible to express any accurate view as to the number

of reports of child abuse in Victoria at the present time or in the past.” (1989: 96)

In spite of this, the Fogarty Report claims that the number of reports to CSV is “...clear from the statistics...” (1989: 16). The rapid growth in referrals to CSV is said to “...place into sharpest relief the problems CSV has encountered in its service...” (1989: 101). In fact, the statistics said to demonstrate the problems can be interpreted in a number of ways.

First, the apparent increase in work after CSV took over responsibility from the Children’s Protection Society could be due to a different way of counting cases. Counting children referred rather than families referred would create an apparent increase in demand. Secondly, given the acknowledged inadequacies in the statistics, it is quite possible that some cases could be counted more than once, with, for example, “consultations” becoming “notifications”. Thirdly, great play is made of these huge increases in demands as a causative factor in the ensuing disarray in the services, but similar, even larger increases have been faced by other states (see, for example, **Our Homeless Children** (1989: 92). Fourthly, the major measure of work actually done (“Notifications Accepted”) in Victoria **dropped** minutely in 1987 / 88 when compared to 1986 / 87 (2,038 compared to 2,046) in spite of a budget increase of more than 30 percent (Fogarty Report, 1989: 101-102, 108).

These major points in the analysis are barely touched on or not addressed at all. When added to the damning evidence of unallocated cases in the post-Court system it is apparent that the system has been totally inadequate:

“...a case which was serious enough to warrant the taking out of a protection application and which resulted in the Court making an order for Wardship or supervision has had in Victoria over the last three years a chance of approximately one in four of remaining completely unsupervised during that order.” (1989: 111)

Growth in demand has not got the blame this time for there was none; real, imagined or exaggerated. The number of children, in fact, has been “remarkably constant”; the problem is “...simply the incapacity of CSV to meet its obligations over a number of years...” (1989: 112). In fact, the criticism of the Fogarty Report on this matter is at its strongest — as the Report clearly states the law places an obligation on the Department to provide the service and it has failed to do so (1989: 75-76).

Unfortunately, detailed data that clearly outlines the workloads of the parts of the dual track system (e.g. Goddard, 1988b) is barely mentioned in the Fogarty Report. Much of the report is critical enough, however. The services are described as being in “...an unsatisfactory state...”; “...the cumulative result of a series of wrong turns...”; creating “...the least effective...” child protection service in Australia (1989: 2). It is apparent that some regions define child abuse differently (1989: 105). Things could hardly be worse. What is to be done?

### SOLVING THE PROBLEMS

Many of the recommendations in the Fogarty Report have been urged by concerned people for some time (see, for example: Boss, 1985; Children’s Welfare Association Position Paper, 1988; Goddard, 1988a). In themselves they are perfectly acceptable.

The reforms (to name a few) include the abolition of the dual track system; the abolition of caseload controls; a central register; a 24-hour welfare-based child protection service; improved supervision of protective workers; better training; more stringent inquiries into child deaths; and greater central control and uniformity. Most of these are components of child protection services that have been in place in other States for a number of years.

These “solutions”, whilst they are a necessary part of an effective child protection service, are not sufficient in themselves to ensure the effectiveness of the system.

According to the Fogarty Report, the cause of the “unsatisfactory state” of Victoria’s child protection services is “...the cumulative result of a series of wrong turns over the past twenty years...” (1989: 2). The service has been “ad hoc” with “...no overall design and little strategic planning...” (1989: 3).

Other major criticisms of Victoria’s protective services are barely referred to in the Fogarty Report: problems caused by ideology (Goddard, 1988a; CWAV Position Statement, 1988); an overall lack of accountability in the services (Goddard 1988a); continuing resource shortfalls; and the subjugation of good child welfare practice by political and organisational imperatives. It is difficult to see how this report and its recommendations can rectify these problems.

An enhanced service, with more workers and available for more hours a day, can still be flawed by confused ideologies and a lack of accountability. Fogarty’s own analogy can be extended here: a series of “wrong turns” means, presumably, that the vehicle

that is protective services is on the wrong road. Putting more people on the vehicle and fitting a larger engine will not get it going in the right direction. A V8 engine, go-faster stripes and a car phone will only help if the car is turned around and the right road been found.

If the services have been heading in the wrong direction what is needed is a clear, large scale map pointing out the available routes and possible hazards. Unfortunately, the Fogarty Report is another victim of the ad hoc responses criticised in the report itself. Pressure of time (and perhaps other pressures) has led to something that the authors describe as “...in the nature of an interim report...” (1989: 11).

Consequently, huge areas of the map are missing completely:

“It is not appropriate in this Report to deal with this matter (child sexual abuse) in any detail.”

(Fogarty Report, 1989: 82)

“It is not within the scope of this Report to deal in a definite way with the vexed question of mandatory reporting.”

(1989: 86)

“An interim report is not an appropriate place to discuss in depth the philosophical and ideological issues which are involved in the concept of child protection and child abuse, and this is particularly so in a report which is largely confined to the Victorian statutory protection service and its effectiveness and efficiency.”

(1989: 48)

Unfortunately, it can be argued that these issues are central to the failures of Community Services Victoria. The perspective adopted by the Fogarty Report needed to be broad, for otherwise any inquiry will only produce a number of detailed recommendations which will miss the deeper point. Protective services may now be a major operation; but such operations, because they involve human beings, will always be prey to problems unless the basic situation is seen clearly.

The basic situation is this. Community Services Victoria has failed, at least until now, to clearly adopt a philosophy that unequivocally places the protection of children at the forefront of their enterprises. The Fogarty Report fails to recognise that children have too often come second to ideology or to a lack of accountability, and to patently inadequate resources. The organisation should provide an environment in which good child welfare practice can flourish, and where workers are valued and visible to the community.

The Fogarty Report declares that Victoria’s protective services are “...the least effective in Australia...” (1989: 2). The

evidence for this statement is not presented. Sweeping generalisations are tempting but, like most temptations, tend to be risky. From the lofty vantage point of an interim report it is easy to overlook much of the good work of those on the ground. In fact, Victoria has many excellent programs that have contributed to the enhanced development and protection of children. Unfortunately, some services and professions have failed in their duties. The State's statutory services, because of their own shortcomings, have been incapable of setting uniform standards and demanding responsibility from those other parts of the service that have failed. As Fontana has declared so succinctly:

"If the inadequacies and failures of the system are to be analyzed and documented, the entire child protection system must be appraised. To criticise and find remedies for one part of the system while ignoring the others is an unfulfilling exercise in futility..."

(Fontana, 1984: 14)

## CONCLUSION

Nothing in life stays the same. A Soviet foreign ministry official was reported recently as saying that developing countries suffer not so much from capitalism as from a lack of it (Krauthammer, 1989). Only a year or two ago such a statement, from such a source, would have been unthinkable.

Less than two years ago, the then Minister for Community Services for Victoria was busy denying that there was a problem in services for abused children. The Fogarty Report can be seen as Victoria's version of

the beginning of **glasnost** (openness). The problems are starting to be acknowledged. Those who are pressing for the much-needed **perestroika** (re-structuring) may yet be disappointed.

There are other reports still sitting on shelves in Government offices in Victoria waiting to be picked up and dusted down (see, for example, Hewitt, 1986; **Sexual Offences Against Children**, Law Reform Commission of Victoria, 1988). The Fogarty Report is hardly a touchstone for child protection services. The only true measure of policy will continue to be what Community Services Victoria actually delivers and how accountable the service becomes: at the time of writing (November 1989), many children on supervision orders and wardship orders await allocation, and the abolition of the dual track system has yet to commence.

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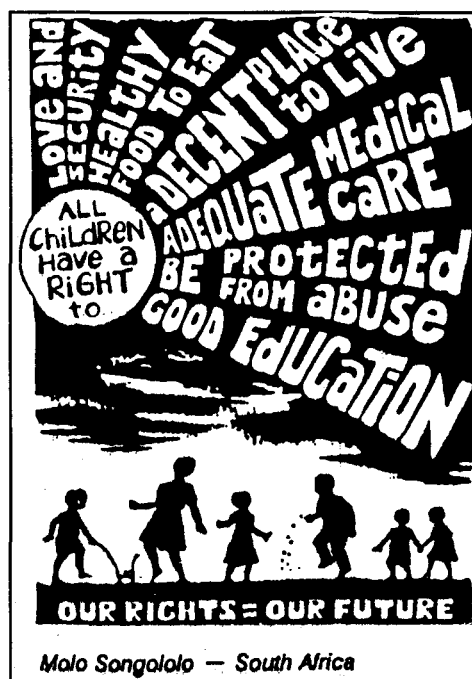
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## U.N. CONVENTION PRIMER

Foster Parents Plan International and Defense for children International — U.S.A. have combined to produce a primer on the U.N. convention on the Rights of the Child.

The primer is currently being launched at functions around Australia.

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