

Office of the Commissioner for
CHILDREN

**Commissioner for Children
Kaikomihana mo nga Tamariki**

A Commissioner for Children was appointed in 1989 to monitor and review New Zealand's child protection and youth justice procedures and to act more generally as an advocate for children. Children are vulnerable in official proceedings and in general. The central role of the Commissioner is to oversee law, policy and practice as they affect children.

Such a role had been included in proposals for child protection law reform for some time. It was debated during the 1979 International Year of the Child. The idea was supported by influential lobbyists such as the National Council of Women. Two public discussion papers in 1984 and 1987, which aimed at reform of the 1974 *Children and Young Persons Act*, included proposals for an independent public advocacy and advisory role in relation to children.

The position was established under the *Children Young Persons and Their Families Act 1989*. This Act provides for children and young people up to 17 years of age who come to official attention because they are in need of care or protection or because they offend against the law. The Commissioner's functions are set out in section 411 of that Act and in summary are:

- ▶ To investigate complaints concerning any decisions made or acts done or omitted under the Act.
- ▶ To monitor and assess the policies and practices of the Department of Social Welfare and other persons and organisations performing any function under the Act.
- ▶ To encourage the development within the Department of Social Welfare of policies and services to promote the welfare of children and young people.
- ▶ To undertake and promote research into any matter relating to the welfare of children and young people.
- ▶ To inquire into and report on any matter, including any enactment or law, practice or procedure, relating to the welfare of children and young people.
- ▶ To receive and invite representations from members of the public on any matter relating to the welfare of children and young people.
- ▶ To increase public awareness of matters relating to the welfare of children and young people.
- ▶ On his own initiative or at the request of the Minister of Social Welfare, to advise the Minister on any matter relating to the Act.
- ▶ To keep under review and make recommendations on the working of the Act.

In some respects the role is akin to that of an ombudsman and in fact the holder of a similar office in Norway is known as the Children's Ombudsman. The New Zealand Commissioner responds to complaints from individuals who believe they have been misused by official proceedings, particularly those carried out under the Act.

In his general monitoring role in relation to the Act, the Commissioner receives information from the department of Social Welfare and has discussions with its staff and the Minister. He receives submissions from and has regular discussion with Care and Protection Resource Panels in each community, representatives of the police, social workers, lawyers, and others concerned with the working of the Act.

In addition, the Commissioner undertakes projects and makes submissions to advance children's welfare in relation to the Act and in other areas. Publications include; *An Appraisal of the First Year of the Act*. *Toward a Child and Family Policy for New Zealand*. *A Children's Rights Approach to Custody and Access*. *Under 5 year old Domestic Swimming Pool Drownings Since the 1987 Fencing of Swimming Pools Act*. *Minimising the Risk of Sexual Abuse of Children in Early Childhood Services*. *The United Nations Convention on the Rights of the Child*. (N.Z. edition in English and Maori with index).

Children's foremost advocates are usually, of course, their parents, families and communities, whanau, hapu and iwi. Many others promote children's well being in their occupations such as in teaching, nursing or social work and through voluntary organisations such as Plunket and Maori Women's Welfare League. The Commissioner aims to keep in touch as much as possible with them and their ideas, opinions and activities by meeting with them and receiving their publications. He aims also to help them keep in touch with one another. A newsletter, *Children*, goes out quarterly to a mailing list of more than 1000 and a monthly circular goes to Care and Protection Resource Panels and Co-ordinators.

Ian Hassall

Commissioner Dr Ian Hassall - Children are people care for them, Tiakeia O tatou tamariki

The Children Young Persons and their Families Act 1989

Ian Hassall

Since November 1989 New Zealand has had new statutory care and protection and youth justice procedures. They differ substantially from the procedures under the old 1974 act. For the majority of cases, the disposition of the child, services provided and, in the case of offending, any penalties or restitution imposed are now the responsibility of the family rather than the Court.

This responsibility is exercised through a new official process called the Family Group Conference, at which the State is represented but in which the decision-making power is expected to rest largely with the family. Only if this fails or if the offence falls into the most serious of categories is the matter passed to the Court. A new group of officials has been created to co-ordinate the process. They are known as Youth Justice and Care and Protection Co-ordinators.

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Those entitled to be present at Family Group Conferences are: the child; the extended family (in Maori terms - hanau, hapu and iwi); the co-ordinator; the social worker (in care and protection cases); a member of the Police (in youth justice cases); the child's legal representative or lay advocate; the victim (in youth justice cases); in some circumstances a probation officer,



representative of the Court, etc. and any other person the family may wish to attend.

The officials appointed to convene Family Group Conferences are expected to ensure that those with a contribution to make are present, or, if that isn't possible, that they are heard. The family have the right to exclude officials during discussion among themselves. The Family Group Conference may conduct its proceedings as it sees fit.

The family's plan must be agreed to by all parties at the Family Group Conference. If there is no agreement the matter generally proceeds to the Court.

The Co-ordinator ensures that any people involved in carrying out the family's plan are informed and that there is appropriate review. The Department of Social Welfare and Police are obliged to give effect to the plan, including resourcing, unless it is clearly inconsistent with the principles enunciated in the Act or impracticable.

In relation to care and protection, community panels have been established in each district. The Act

specifies their role in advising the Department at certain points in the process.

In the youth justice process, police warnings and diversion play a prominent part at the point of apprehension of the offender. Victims are entitled to participate as full members of the Family Group Conference.

The Experience

In the year following the enactment of the new law, 3,394 Care and Protection and 5,851 Youth Justice Family Group Conferences were held and agreement was reached in 91% and 94% of these respectively.¹ Four hundred (12%) of the Care and Protection cases proceeded to the Family Court and 900 (15%) of the Youth Justice cases proceeded to the Youth Court. The number of youth offences remained much the same, but arrests fell from 29% to 6% of these and Court appearances from 45% to 10%.

These statistics demonstrate that the broad processes of the Act have been put into operation, that decision-making has been transferred from Court to community and Family Group Conference. They do not indicate whether the objects of the Act, indeed the very purpose of any child protection and youth justice law, have been achieved and its principles upheld. The objects are stated explicitly and in detail in section 4 of the Act and can be summarised as follows:

1. Establishing services that assist children and families.
2. Assisting families to prevent harm to their children.
3. Assisting when family relationships are disrupted.
4. Protection of children from harm.

- 5. Holding young offenders accountable and meeting their needs.
- 6. Encouraging co-operation among service providers.

Some information on whether or not these objectives are being met is to hand, some will be available soon and a great deal is yet to be determined.

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Paterson and Harvey researched the Family Group Conference process in the disposition of children and young people reported as needing care and protection and found this in general to be functioning satisfactorily.²

A report of a Ministerial committee appointed to enquire into the operation of the Act (the Mason Report) was published in early 1992.³ It was generally favourable although it recommended that attention be paid to

a number of areas. The Government published its proposed responses to the Mason recommendations in conjunction with the release of the report and by the end of 1992 many of these have been carried through. Amending legislation has been prepared and finance has been allocated. One of the Mason recommendations, that Department of Social Welfare staff be better trained, has resulted in a considerable commitment of resources over a five year period.

Maxwell and Morris have completed a study of a sample of young people coming to attention because of offending. This study's results are due to be published shortly.⁴

Summary

The way in which children and young people who offend or are in need of care or protection are dealt with in New Zealand took a new direction with the implementation of the *Children Young Persons and Their Families Act* in November 1989. Decision making has been largely transferred from Court to Family. Some information is now available as to the effect of this transfer but more is needed. ♦

References

¹ Hassall B., Maxwell G.M., Morris A., Robertson J.P. (1991) *An appraisal of the first year of the Children, Young Persons and Their Families Act 1989. A briefing paper.* Wellington: Office of the Commissioner for Children.

² Paterson K., Harvey M. (1991) *An evaluation of the organisation and operation of Care and Protection Family Group Conferences.* Wellington: Department of Social Welfare.

³ Shipley J. (1992) *Review of the Children, Young Persons and Their Families Act 1989.* 1. Report of the Ministerial Review Team to the Minister of Social Welfare. 2. The Government's response to the Report of the Ministerial Review Team. Wellington: Government Print.

⁴ Maxwell G.M., Morris A. (1992) *Family victims and culture: youth justice in New Zealand.* Wellington: Institute of Criminology, Victoria University of Wellington.

RETHINKING POLICIES FOR YOUNG PEOPLE: TOWARDS A NATIONAL PERSPECTIVE



A National Conference sponsored by: Centre for Youth and Community Studies, RMIT; National Centre for Socio-Legal Studies, LaTrobe University; and the Youth Research Centre, University of Melbourne.

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