PROPOSALS FOR LEGISLATIVE CHANGES IN RELATION TO NEGLECTED CHILDREN AND CHILD OFFENDERS IN TASMANIA

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All the Australian states are either in the process of or have completed reviews of their child welfare legislation. The Australian Law Reform Commission has also completed its report on the reform of the child welfare laws. In Tasmania the Report of the Committee of Review into the Child Welfare Act 1960 and Social Welfare Services (the Roe Report) was tabled in December 1980. The following comments are directed to the two parts of the report dealing with children in need of care and children's courts and young offenders. A draft bill is in the process of preparation incorporating the substance of these proposals.

Those who looked forward to proposals which seek to meet the criticisms of the welfare approach to juvenile offenders and the assimilation of offenders and deprived children have been disappointed. The report proposes the development of a community welfare orientation by seeking to change the emphasis from remedial institutional services to preventative community based services, but it fails to deal with other fundamental criticisms of the existing system. The failure to reduce crime through the criminal justice system, the hypocrisy injustice and subjectivity of the welfare approach and the ambivalence and confusion inherent in the existing system are not adequately resolved.

The Philosophy Provisions

The report recommends the incorporation of a preliminary statement of objectives in the legislation, including a provision that "the interests of the children in the community shall be considered paramount, and any person shall in exercising powers conferred by this Act adopt a course of action calculated to:—

(1) Secure for the child such care, guidance and protection as will be conducive to the welfare of the child; and

(2) Conserve or promote, as far as may be possible, a satisfactory relationship between the child and other members of his family or domestic environment,

and the child shall not be removed from the care of his parents or guardians except where his own welfare, or the public interest, cannot be adequately safeguarded otherwise than by such removal".

This was suggested as a replacement for the present s.4 of the *Child Welfare Act* which provides that a child offender or suspect be treated, not as a criminal, but as misdirected or misguided child, but the difficulties and ambiguities inherent in the concept of the welfare of the child are not adverted to. To provide that the interests of the child are paramount seems incompatible with the role envisaged for the proposed young persons court when confronted with offenders, and neglects the concerns and needs of parents when the problem is one of "need of care". The proposed provision is identical with s.3 of the *Juvenile Courts Act* 1971 (N.S.W.) which has been repealed. The new "philosophy section" in the *Children's Protection and Young Offenders Act* 1979 (N.S.W.) more specifically recognised the responsibility of children for their actions and the need to protect the community as well as the interests of the child and avoidance of removing the child from his family.

Children in 'need of care'

The term 'children in need of care' is the terminology recommended to replace that of 'neglected and uncontrolled children'. The definition is said to be very substantially altered. In fact the proposed amendment in substance merely involves retention of the first two more general paragraphs of the existing definition of "neglected child" omitting the more specific and archaic provisions relating to begging, opium dens, soliciting, truancy, living with prostitutes, drunkards, V.D. or T.B. sufferers.[1]

Thus the proposed definition of a "child in need of care" is one who is (a) in need of care or protection, or (b) exhibiting uncontrollable behaviour of a nature and degree to cause concern for his well-being or social adjustment. The repeal of s.33 of the *Child Welfare Act* 1960, which enables parents or guardians to bring children beyond control before the courts is recommended. The s.33 procedure is clearly an inappropriate and drastic response to problems with a child, and as the Committee commented, one which is likely to lead to irreparable breakdowns in the family situation and parent-child relationships.

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Provision of opportunities for counselling and welfare assistance is preferable.

No other significant changes are recommended to the legal process by which a neglect case is brought before a court, although the Committee noted that despite these provisions complaints and charges have been laid against individual children. Such evidence would seem to indicate the need for clarification by proscribing proceedings against individual children in neglect cases.

Powers of Disposal of Neglected Children

Currently the Director may upon the application of a parent or guardian, make a child a ward of state. Children's Courts may if satisfied a child is uncontrollable or neglected, declare the child a ward of state, make a supervision order or an interim order. The Committee recommended that the concept of wardship be abandoned because of the stigma attached to it resulting partly from the use of the same order for offenders and neglected children. Currently a ward of the state is under the exclusive guardianship of the Director until he is 18, (or 21 in some circumstances) unless terminated by the Minister. Instead of the power of the Director to make a child a ward of state by consent of the parents, which is indeterminate and non-revocable, the Committee proposed a series of responses to children who appear to be in need of care. Paragraph 3 of the draft legislation states the Director may offer advice, assistance, and guidance to the family of a child in need of care or in danger of becoming in need of care. Secondly, the Director may enter into an agreement with the parents to receive a child into his care, such agreement being revocable by either party giving 14 days notice. This is intended to be a very short term measure for assessment but this is not made clear by the draft provisions and a short maximum period should be specified. Thirdly, a contractual agreement for guardianship for a specific period may be made. These proposals are clearly preferable to the existing position where parents or guardians are not in a legal position to demand the return of the child at a future date once they have consented to wardship.

Instead of the power of the court to declare a child a ward of state, the Committee recommended guardianship for children in need of care and care and control orders for offenders. The proposed guardianship orders are indeterminate and expire when the child attains the age of 18 years unless terminated by an order in writing of the Minister, or extended until the age of 21 years (paras. 5.1 — 5.3.). There is provision for a Review Committee to be established by the Director with the function of reviewing cases under guardianship at least once every two years (para. 6.5.). It is also recommended that the Director be obliged to cause every young person under guardianship or in the care and control of the Director, to be visited by an authorised officer (para. 6.6). Rights of review of guardianship and care and control orders are proposed. It is recommended that the child (if at least 14 years of age) and the parents should have the right to apply to the court for review of such orders after 9 months, and thereafter at 9 monthly intervals (para. 6.11.). The existing powers of the court to make supervision orders is retained, as is the power to make interim orders for a 3 month period of assessment.

Criticisms of the Proposals for Children in Need of Care

The proposals contain some desirable changes but fail to deal with the fundamental objections to the jurisdiction of the courts in cases of neglect and uncontrollability. First, the concept of "proper care" in paragraph (a) of the definition of a child in need of care is broad and subjective. Many commentators question whether the state should take it upon itself to intervene to attempt to improve those whom in authority believe to be living in an unsatisfactory manner. Intervention involves the danger of using subjective criteria and imposing middle class values on others. Theories of child care are susceptible to dramatic changes in popularity and many would argue we lack sufficient knowledge about child development and proper upbringing to justify intervention in loosely defined situations of "improper care". (Wald, 1976; Morris and McIsaac, 1978; Chisholm, 1979). The over representation of aboriginal children in the Welfare Department's custody in New South Wales indicates the consequences of the use of vague provisions which necessitate the use of value assumptions. Intervention should only be permitted where precisely defined specific types of harm or the risk of such harm has been established. Children require protection from over zealous intervention as well as protection from inadequate parents. In South Australia, the definition of a child in need of care is much more specific with an emphasis on children who have suffered or are at risk of suffering physical or mental injury and abandoned children *(The Children's Protection and Young Offenders Act* 1979). Consideration by The Roe Report of definitions currently in use or proposed in other states would have been profitable.

Secondly, the assumed beneficial effect of intervention in cases of neglected children has been questioned. Intervention may well have a stigmatizing and alienating effect upon parents and the children concerned. The terminology of the Committee's proposals sound less stigmatizing, but "in need of care" will become synonymous with "neglected" unless the changes to the role of the Department and the courts are more fundamental.

Thirdly, the power of the state to intervene in cases of children whose behaviour, although "uncontrollable", does not amount to actual criminal conduct, is challenged by many writers. The net is cast wider on the assumption that something constructive can be done, but there is little evidence that it can, and intervention probably does more harm than good. The labelling processes associated with the processing of juveniles by law enforcement agencies may alter the child's self concept so that he begins to see himself as delinquent and further delinquency may follow (Farrington, 1975). If institutional care results from intervention, educational progress may be hindered and employment prospects diminished. Thus intervention in cases of "uncontrollable" children is seen by many as unfair and ineffectual. There is also evidence that the label "uncontrollable" is used in a sexually discriminatory way. If girls behave in a promiscuous fashion they may be labelled as uncontrollable but the equivalent behaviour of boys is most unlikely to attract coercive intervention. (Armstrong, 1977; Omodei, 1981).

Fourthly, there is a growing body of opinion that deprived or neglected children should be dealt with separately. The Committee makes some attempt to differentiate by recommending abolition of wardship and substituting guardianship orders for children in need of care, and custody and control orders for offenders, but it recommends a

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single instrumentality to deal with both, the 'Children's and Young Person's Court'. The philosophy underlying the unity of approach to delinquent and children in need of care, that they have the same problems and will respond to the same treatment, is now questioned. Experience has shown that this approach to delinquent and neglected children led to ambivalence and confusion in the court's role, a neglect of legal rights and due process, an increase in stigma attaching to neglected children and the opportunity to learn criminal behaviour by association with experienced offenders. Social policy should take into account the divergences between neglected and delinquent children rather than conceal them. Separated provisions and the abolition of the term 'ward of state' do not go far enough. The objectives of intervention will be clarified if separate tribunals are set up for dealing with offenders and neglected children. The adversary procedures of the Court of Petty Sessions are appropriate to consider the question of whether a child has committed a proscribed act, but they are inappropriate to the settlement of welfare problems and custody disputes between the Social Welfare Department and the parents. An alternative frequently suggested for the disposal of neglect cases is the Family Court model. This was not even adverted to in the Roe Report.

Wherever possible and whatever the tribunal or court, the neglected child should be protected from coercive intervention and court proceedings. The Committee proposes a graduated series of responses to children in need of care reserving prosecution for those situations in which voluntary arrangements cannot be worked out through financial assistance, guidance and agreements for short term care.[2] That court proceedings are a last resort requires more emphasis than the Report gives, by a requirement that the Department show that it has exhausted all alternatives as a pre-requisite to a court order or that the situation is so critical that the consideration of alternatives is impracticable.[3] It is further suggested by this writer that to ensure court proceedings are a last resort and the role of the Department is not merely residual, the situation in which intervention is jusified could be differently defined depending upon whether intervention is by consent or coercion. The provisions recommended by the Roe Report only differentiate by permitting offers of assistance and consensual arrangements for care in cases where the Director believes a child is in need of care or in danger of so becoming, and permitting the court to make orders where a child brought before it is in need of care. In need of care has the same meaning in both cases. What is needed is a more stringent definition of the situations in which coercive intervention by the courts is justified.

There is also concern as to whether in fact adequate community based services will be made available. De-institutionalization, a community welfare orientation and an emphasis on consensual arrangements can only be achieved if there is an adequate network of locally based family support services to support the family and avoid the necessity for the child's removal from home. These will need to be increased, co-ordinated and publicised if coerced intervention is to be minimized.

A further criticism of the Report is the Committee's failure to discuss in detail its recommendation that the child protection provisions currently contained in the *Child Protection Act* 1974 be incorporated into the new Act. The concept of a specialised child protection unit within the Department is supported, but many questions are left unanswered; particularly in relation to the future of the existing Child Protection Assessment Board and Child Protection Oders.

The indeterminate nature of guardianship is open to criticism. In South Australia for example, such guardianship orders are for a specific period. The suggested power to extend guardianship to the age to 21 is also objectionable. If persons of 18 years and over require compulsory care, they should be dealt with under mental health legislation or not at all. The composition and the powers of the Review Committee need clarification. It is not clear whether its role is advisory or whether it has the power to terminate guardianship. Furthermore the rights of review and appeal are insufficient. As explained earlier the Committee recommended a child (if at least 14 years of age) or the parents should have the right to apply to the court for review of a guardianship order after 9 months and thereafter at 9 monthly intervals.[4] It has been argued that the right should be available at any time to apply first to the Director, and then the Review Committee and finally with a right of appeal to the Children's Court. Rights of appeal from court orders in general also need to be clarified.[5]

There is another problem under the exisiting Act which is not resolved by the Roe Report. S.39 provides that interim orders can be made authorising detention of a child in the custody of the Director "if a Children's Court is not in a position to decide whether any and, if so, what, order ought to be made". The Roe Report recommends the retention of this power in the same terms. The current practice of the Children's Courts appears to be to make such orders before a finding of neglect or beyond control is made, but currently there is some disquiet about the legality of this practice. It is the opinion of this writer that s.39 presupposes a finding of neglect or beyond control, but the matter should be clarified. The current concern appears to be at least partly attributable to the recent decision of Everett J. in *Re O* in which it was held that procedural requirements in relation to neglect proceedings must be strictly observed, and a supervision order made by the Children's Court was quashed on the grounds of a defect in relation to the procedural requirements initiating the proceedings.

Young Offenders

Section 18 (1) of the Criminal Code provides that a child under the age of 7 is conclusively presumed to be incapable of commiting a crime.[6] The Committee recommends that this age be raised to 12, and that the rule be retained that under the age of 14, a child's knowledge of the wrongfulness of the act be proved, (s.18 (2)). It is suggested by the Committee that evidence of criminal behaviour prior to this stage should be dealt with under the need for care and control provisions.

It is also recommended that the maximum age of offenders appearing before the Children's Court be raised from 16 to 17 to conform with the age of majority (p. 43 of the Report). This will have the benefit of providing an alternative to prison for seventeen year-olds.

The Committee recommended little alteration to the provisions relating to arrest, bail and detention of children, but suggested provisions ensuring the presence of parents during police interviews were practicable (pp. 50-51 of the Report). This has been criticised as not going far enough. Provisions should ensure no young person is interviewed in the absence of an adult prepared to protect their interests and explain their

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rights. If parents are not available then other responsible adults should be specified, perhaps a rostered legal aid solicitor, or a justice of the peace in country areas. Support for the mandatory requirement of some independent presence during interviews comes from the decision of Matterson S.M. in *Police* v. *K & N.*[7] where it was held the presence of an independent person is imperative. The Departmental response on the other hand approves the existence of a discretionary rather than a mandatory requirement.

Diversion.

In Tasmania at present there is no formal statutory scheme for the diversion of children from the courts. The police of course have the discretion to administer a formal caution and discharge offenders. Their Standing Orders contain provisions to guide the use of this discretion and the mode of administering cautions. Such cautions are administered by a senior police officer in the presence of the child's parent. Records are kept of these warnings. Although not officially condoned some children are informally cautioned on the spot and no record is made.

Formal schemes for the diversion of cases from court have become very popular. Embracing this development the Roe Committee has proposed Local Screening Committees to divert trivial matters from the courts and to make help available to families without recourse to a major judicial system.[8] All children charged with offences other than those arrested or served with infringement notices under the Road Traffic Act would be considered by a Screening Committee consisting of a senior police officer and a senior welfare officer. After considering police evidence, prior record and social welfare information they would decide whether or not the matter should be prosecuted. In the event of a prosecution not being approved, the powers of the Screening Committee would be to request, but not order, parents or guardians to take the child to a police station or welfare office to receive a caution, the offer of assistance or advice or to receive a visit of a police officer or welfare officer offering advice, assistance or information.

The discussion section in the Report recommends the Screening Committee have the power to order the return or disposal of property associated with the offence, but the draft provisions contain no such power.

Records are to be kept by the Screening Committee for a maximum of three years or until the young person concerned is 18 years of age whichever is sooner, and such records are not to be admissible in Court. In South Australia there are somewhat similar "Screening Panels". However they operate in conjunction with "Children's Aid Panels" and have the sole function of deciding whether the case is to go before an Aid Panel or a Children's Court.

The Committee explicity rejected the Juvenile Aid Panel, the solution adopted in South Australia and Western Australia, on the grounds of the elements of coercion they involve. Under threat of referral to a court with heavier sentencing power there is first, coercion to admit guilt, and secondly, coercion to agree to limitations on behaviour in contracts for supervision.

The Departmental response approves the establishment of Screening Committees without qualification, noting that such a process has taken place on an informal level in some districts.

Clearly diversion is a useful concept. Currently many people appearing before the Children's court are fined or admonished and discharged, and many of them could be dealt with differently, reducing the possible contaminating, stigmatizing and labelling effect of a court appearance and conviction. Warnings have been sounded of displaying an unthinking commitment to the conception of a diversion.[9] The labelling theorist Edwin Lemert, who enthusiastically advocated the concept in the late 1960s is now disillusioned with its operation, claiming the concept has been distorted and displaced, and has resulted in an expansion of intake into the criminal justice system and an increase in police discretion, the reverse of that which was intended (Lemert, 1981). Any proposal for diversion must therefore be carefully scrutinised to ensure that pitfalls encountered elsewhere are avoided. Some reservations are apparent in relation to the Screening Committees suggested by the Roe Report. First, as to the composition of the panel. It has been questioned whether the roles of police officer and welfare officer can be compatibly combined. Perhaps an independent assessor such as the Scottish Reporter would be a more suitable answer.

Secondly, clarification is needed as to criteria for appropriate cases for diversion. If part of the function of the Committee is to divert not merely trivial cases, but also those cases which are a sign that the individual or family needs help, then the socially disadvantaged are likely to be disadvantaged. Their problems are less likely to be favourably viewed than less deep-rooted problems. In other words the decision to divert may involve discriminatory practices. Morris and McIsaac argue diversion should not have a social welfare framework. They suggest that criteria for diversion should be confined to level of seriousness of the offence (measures on a scale e.g., Sellin and Wolfgang's Scale), and degree of involvement.[10]

Thirdly, fears have been expressed in relation to assumptions being made as to guilt. Although there is no requirement that guilt be admitted, the child may consider himself to have done nothing wrong and may not in fact be

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guilty of an offence. Nevertheless he may become subject to police or welfare intervention, and records of his appearance will be available in the event of any subsequent charge being heard by a Screening Committee, although if the case had been heard in court he may have been found not guilty. There is also the danger that those who proceed to court may be assumed to be guilty.

This third objection is inherent in all schemes for diversion and is a disadvantage which must be weighed against the advantages of diversion. At least in the model advocated by the Roe Report intervention is minimal. The matter of assumed guilt by the court in cases of approval of prosecution is inherent in all schemes for diversion and is perhaps an overly cynical assessment of legally trained magistrates.

The fourth matter relates to the diversionary role of the police in administering cautions rather than prosecuting the matter. This is not included as an exception to the cases which must be referred by the police to the Screening Committee and it is therefore not clear whether the Screening Committees are to usurp this traditional function of the police. In fact the Committee's Report fails to advert to this matter at all. Consideration of this role and its future relationship to the functions of Screening Committees is essential. The possibility exists that police decisions to caution and release can be arbitrary and prejudiced. Research elsewhere indicates that social class factors and demeanour are very relevant to the decision, yet because of either the effects of labelling or the validity of criteria used by the police, the recidivism rates of those cautioned have been found to be significantly less than those sent to court (Kraus, 1973). The questions of whether more use should be made of cautions, whether statutory guidelines on the use of cautions should be introduced, and the relationship between this role of the police and that of the proposed Screening Committee should have been canvassed by the Report. If some or all of those children who would have been cautioned by the police are referred to the Screening Committees, this may increase their penetration into the criminal justice system with possibly adverse consequences.

A further reservation relates to the exclusion of arrest cases from consideration by the Screening Committee on the grounds of delay. Although the Committee recommends the police are to be required to only proceed by way of arrest when it is inappropriate to proceed by way of summons, effective diversion of matters by Screening Committee is going to depend upon the police properly exercising their discretion in relation to arrest. It is instructive that this situation existed in South Australia under the 1971 Act but has been changed so that cases of arrest are now reported to Screening Panels.

The Young Person's Court

The Committee recommended that the Children's Court be renamed the "Young Person's Court" to emphasize the increased status of the Court in terms of severity of cases heard and penalties awarded. This will result from the diversion of trivial cases, the exclusion of younger offenders and the inclusion of 17 year olds. It is envisaged by the Committee that this would upgrade public perception of the court from a light weight "Kiddies' Corner" image.

The role envisaged for the court does not appear to be compatible with the overriding principle that the interest of the child be considered paramount. In many cases the court will see the need to balance the elements of general deterrence, denunciation and retribution with that of the interests of the child. The need to protect the community is clearly recognized by the provision for detention orders, and the power to imprison 16 year olds is retained where there is no satisfactory alternative. If the interests of the child are paramount, it is difficult to envisage that imprisonment could ever be justified.

There is currently widespread support for the view that social welfare and social control goals are contradictory, and when a single tribunal attempts to do both it is bound to lead to confusion and ambiguities and a failure to achieve expectations (Morris and McIsaac, 1978). Moreover, there is widespread disillusionment with the welfare approach to offenders and rehabilitation as a sentencing goal. Most contemporary opinion has abandoned the interests of the offender as a general aim of sentencing and recognized that no single rationale should predominate. Disillusionment with rehabilitation is epidemic on the ground that it does not usually work, and on the ground of the threat it poses to legal rights. The language of welfare in the context of offenders has been exposed as a euphemism for social control, and control without the limiting influence of proportion between offence and official response. This realization calls for a differentiated response to offenders and neglected children. For serious offenders there should be juvenile courts with an admitted social control orientation, with "due process" and punishment according to principles of justice and fairness, and within this framework there should exist the opportunity for voluntary treatment programmes. Trivial offenders should be diverted by the police, and/or a Screening Committee guided by strict objective criteria.

Powers of the Children and Young person's Court

Under existing legislation the Children's Court has the power in relation to offenders, of absolute discharge with or without admonishment; conditional discharge; to make supervision orders; or if the offender is at least 15 years old, probation orders; to declare a child a ward of state with or without indeterminate committal; to order imprisonment if the offender is 16 years old; and to find within certain specified limits. There is also a power to remand for observation.[11]

The Roe Committee has recommended the abolition of wardship and indeterminate committal, and the substitution of care and control orders for periods not exceeding two years and detention orders for specific periods not in excess of 6 months (para. 16.5 (b) and (c).) In the case of both care and control and detention orders, the Minister may discharge them if it is in the best interests of the offender and is commensurate with the need to protect the community against serious risk (para. 16.9 (e) and 16.10 (b)). The removal of the elements of indeterminacy in orders applicable to offenders satisfies the criticisms of indeterminate orders and administrative control over sentencing. Although the proposals allow the court to determine the nature and length of sentence, flexibility is retained by allowing for response to a child's changing needs, and so there is a balance of judicial and administrative control. The system of review of care and control and guardianship orders recommended by the Report has already been described.[12]

New provisions are recommended to formalise the existing practice of reviewing young offenders sentenced to imprisonment within one month of

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sentence with a view to transferring them to institutions operated by the Director.[13]

The Committee recommended raising the minimum age for supervision by probation officers from 15 years to 16 years and some modifications to supervision orders to allow for the use of future community based programmes such as attendance centres and work orders. The draft proposals appear to allow the supervising officer as well as the court to decide upon the conditions of supervision, whereas under the existing provisions in the Act the conditions are a matter for the court.[14] This may give rise to some conflict as to control over the sentence. The Department's reponse to the Report quite rightly suggests that there should be some limit to the number of hours attendance required.

Provisions are also suggested for written notice of court orders in clear and simple terms, to be served on the young person with advice as to where further explanation of the order may be obtained.

Legal Representation

The Committee rejected the provision of mandatory legal representation for children on the ground "that the experience in other states had demonstrated that this is a neutral device at best and deflects the purpose of the Children's Court from protecting the welfare of children to a more formal and often inappropriate legalism". It further suggested that mandatory legal representation may be confusing to young people and parents.

The Committee instead recommended that each young person be informed of the right to free legal representation, and if un-represented that the proceedings be explained. The rejection of mandatory legal representation on the grounds that it is confusing has been criticised as patronising by one group of commentators on the Report. They pointed out that families from social groups familiar with the legal system will continue to be advantaged, because they will continue to make the fullest use of legal representation. They suggested legal representation should be available not only when a young person goes to court but also when a young person is detained.

If legal representation elsewhere has been ineffective and caused court hearings to be unduly legalistic, the fault may well be with the representation provided (Appleby *et al.,* 1979). A specialist panel of lawyers with particular expertise in and sympathy with the problems of children, or the provision of a children's advocate warrants consideration.

Young Person's Review Board

The Roe Report recommends the establishment of a Children and Young Person's Review Board comprising representatives of the Magistracy, the Police Department, the Social Welfare Department, the Attorney-General's Department and a research officer, to monitor the activities of the courts and the Screening Committees, to enhance co-operation and understanding between participants in the Young Person's Court processes and to initiate and co-ordinate research programmes. Such a Board was seen as a remedy for the present disturbing and surprising absence of statistics available to magsitrates to assist in their decision making.

The paucity of information available to magistrates is hardly surprising to those familiar with the criminal justice system in Australia. The recommendation is rather vague as to what information is to be made available to magistrates and how it is to be used. Sentencing guidelines for example, based upon the past decision of the courts, would satisfy principles of justice and fairness but would undoubtedly conflict with a welfare orientation.

Conclusion

The main defect of the Roe Report is that it is but a halfhearted attempt to change direction and satisfy current criticisms of the current approach to children in trouble. The need for separation between offenders and care cases is recognized but not implemented. Although the abolition of wardship is recommended, to be replaced by guardianship for children in need of care, and care and control orders for offenders, separate measures will do little in terms of reducing stigma, if deprived and delinquent children continue to be dealt with by the same courts and sent to the same institutions. The proposals continue the confusion about the purpose of intervention in the case of offenders by making the interests of the child paramount. They fail to remove the subjectivity and value judgments involved in the criteria for coercive intervention in the case of children in need of care. They fail to introduce precisely defined criteria to guide decision making in decisions to divert offenders. When the changes to the *Child Welfare Act* 1960 are eventually made, it is to be hoped that they will be more far-reaching than the Roe Report recommends.

1. S.31, *Child Welfare Act,* 1960, compare para. 2 of the Roe Report.
2. This is regarded as one of the major strengths of the Report by the Department (Department Response, p.5).
3. One group of commentators on the Report point out that if the Department is not obliged to provide resources to children before they come into care, it will still be fulfilling a residual role. If a child is identified as in need of care (see para. 2.3.1.) the offered provision of assistance and guidance must be mandatory and not merely discretionary.
4. Supra, p.4.
5. See *Re O* (an infant), Unreported Judgments, No. 17/1981, Everett J.
6. Elsewhere in Australia it is 7, 8 or 10.
7. Decision of 22/8/1978, See *Legal Services Bulletin* (1979) 3, 21.
8. See pp. 46-48 and 54-57 of the Report. In South Australia similar "Screening Panels" are in operation in conjunction with Children's Aid Panels.
9. See Australian Discussion Paper, Topic 2, "Juvenile Justice before and after the onset of delinquency". *Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, p.*
10. *Op. cit.,* p.152.
11. *Child Welfare Act* 1960, ss. 21, 22, 23, 24.
12. *Ante,* p.4.
13. Para. 16.2(c), compare s.30(1) *Welfare Act.*
14. Para 16.7(a) and (d)(i), compare *Child Welfare Act, 2.36.*

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