LA TROBE UNIVERSITY

LEGAL STUDIES DEPARTMENT AND HUMAN RESOURCE CENTRE

AUSTRALIAN LEGAL WORKERS' GROUP

SEMINAR ON JUVENILE JUSTICE REFORM IN VICTORIA

MONDAY, 1 JUNE 1981, 9.45 A.M.

ISSUES IN AUSTRALIAN JUVENILE JUSTICE REFORM

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

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LIMITATIONS

I must frankly acknowledge at the outset three limitations which inhibit me in addressing this seminar:

* The Federal Issue. In the first place, the theme and purpose of the seminar is Juvenile Justice : the Road to Reform in Victoria. I am a Commonwealth officer working in a Commonwealth authority. I have learned enough over the past six and a half years to know that gratuitous interference by observers (however well intentioned and informed they may be) in the internal legal affairs of other jurisdictions are generally not welcome, frequently resented and always (or almost always) ignored. I do not presume to say anything about juvenile justice reform in Victoria. In the Australian Law Reform Commission we have been examining juvenile justice reform in the Australian Capital Territory. There are special features of that Territory which may render reforms there inappropriate for other parts of the country. By the same token, one of the happiest features of organised law reform in Australia in recent years has been the increasing willingness of State and Territory authorities to pick up proposals for reform advanced in reports of the Australian Law Reform Commission. Without wishing to interfere, it is my hope that the forthcoming report of the Law Reform Commission on Child Welfare and these observations of mine today will be considered of use and not interference by our Victorian colleagues. Certainly in the preparation of our report we have had a great deal of help from Victorian Government officers and from academics, police and welfare interests in this State.

* The N.S.W. Bill. Secondly, within the last fortnight the Minister responsible for child welfare matters in New South Wales, Mr. Jackson, has tabled in the New South Wales Parliament an explanatory memorandum setting out proposals for reform in that State, following exhaustive inquiries and the earlier Green Paper. Unfortunately, the Bill for the reforms of New South Wales child welfare law has not yet become available. I gather the impediment is an industrial dispute at the printing office. Although I have received copy of the Minister's explanatory memorandum, and although I have examined this, I am not in a position to comment at any length on the New South Wales reforms, nor, perhaps, would it be appropriate for me to do so. The fact is that we now have before us a complete major State proposal for reform in the child welfare area. Shortly we will have another, in the report of the Australian Law Reform Commission. The reforms of child welfare law will be advanced in Australia by our constantly learning from each other. One of the distinct benefits of a Federation is the possibility of experimentation in different communities in a basically homogeneous country. It is possible in this way to compare achievements and differing approaches. It is possible to learn from mistakes and failures. None of us should be so sure of our own rectitude to be certain that we have all the answers to all the problems in this difficult, sensitive and always controversial area of law and social policy. I hope that some participants in the seminar who have studied the New South Wales proposed legislation with care, will be able to comment upon the lessons in it for Victoria and, indeed, for other jurisdictions in Australia.

* Undelivered Report. Thirdly, and most fundamentally, the reason I am here is that I am Chairman of the Australian Law Reform Commission, a permanent authority established by the Federal Parliament to advise and report to the Attorney-General and Parliament on reform of Federal laws. As you know, one of the projects given to us is related to the reform of child welfare laws in the Australian Capital Territory. In that project, we were led by Dr. John Seymour, a Senior Criminologist of the Australian Institute of Criminology and a distinguished authority with a deep knowledge and understanding of child welfare law and procedures in Australia, in New Zealand (his homeland), in Britain and in other countries. Also participating in the inquiry have been my colleagues, Professors Gordon Hawkins and Duncan Chappell, two of Australia's leading experts in criminology and the law as a social science. Other participants have included experienced legal practitioners and consultants drawn from many jurisdictions and differing disciplines. The fact remains that the Law Reform Commission's report on child welare has not yet been delivered. The report proper is in a final state, a few finishing touches to be added

to one chapter. The delay in the delivery of the report has arisen principally the intricate, time-consuming, exhausting but vitally important task of preparing a draft Bill to attach to the Commission's report. In this endeavour, we are being assisted by the great skills of Mr. John Ewens. Mr. Ewens was formerly First Parliamentary Counsel of the Commonwealth and, for a time, one of the Law Reform Commissioners. The draft Bill is all but complete. Drawing legislation is an intensely difficult task as everyone who has ever had anything to do with it will agree. Where matters of individual liberty are concerned, even greater care must be taken. Where the liberties and the lives of children are concerned, great sensitivity and attention to detail is vital. I regret that the report of the Law Reform Commission is not finished. Not only does it inhibit what I can say at this seminar today. It also impedes the early consideration of reforms in the Capital Territory, where they are certainly vitally needed. The Law Reform Commission works with miniscule resources. In the midst of the project, Dr. Seymour's term as a Commissioner expired. The government did not continue his commission. He has therefore had to assist us on an informal basis, giving time amongst his other duties to the Institute of Criminology. Likewise, difficulties have faced us from time to time in securing Mr. Ewens' services. With small funds and limited personnel resources, available only with interruptions, it has not been possible to discharge this reference as quickly as I should have liked. Law reform on the cheap must, I regret to say, impede the speed with which reform proposals can be advanced. Especially where reforms are urgent, this is an unfortunate fact of life. But it is one which the Law Reform Commission, the government, Parliament and the community must frankly face. In a world of budget cuts, staff ceilings and razorly activities, we must all learn to lower our expectations somewhat, including in law reform.

I have now explained the background against which these observations of mine are to be made. Because I obviously cannot foreshadow the recommendations of the Australian Law Reform Commission before they have been delivered to the Attorney-General and Parliament, I propose to limit myself rather to a description of the way we have gone about our task. I shall add a few observations concerning some of the key issues raised in our inquiry on the road to reform.

THE ALRC REPORT AND ITS BACKGROUND

The Reference. The report of the Australian Law Reform Commission arises out of a reference given to the Commission by the Federal Attorney-General on 18 February 1979. Under the terms of reference the Commission was to inquire into child welfare law and practice in the Australian Capital Territory (A.C.T.). The Commission was asked to consider the rights and obligations of children, of parents and other persons with responsibility for children, and of the community. In particular, the Commission was asked to examine:

- the treatment of children in the criminal justice system;
- the position of children at risk of neglect or abuse by their parents or caretakers;
- the roles of welfare, education and health authorities, police, courts and corrective services in relation to children; and
- the regulation of the employment of children.

The reference also draws attention to the need to review the Child Welfare Ordinance 1957 (A.C.T.) and other laws of the Territory relating to the welfare of children, to the need to keep in mind the importance of viewing child welfare in the context of general community welfare, and to the Commission's obligation to consider proposals for uniformity between laws of the A.C.T. and the laws of other States (in particular, in this context, New South Wales (N.S.W.)).[1] As I have said, the Commission did not undertake a national inquiry into child welfare and practice. Its report deals only with the A.C.T., although, as will appear, many of the issues which are addressed in the Territory are the same as those being considered elsewhere in Australia and overseas. The Commission was originally required to report by 31 October 1979. This deadline was subsequently extended, but it did not prove possible to meet the extended deadline. The issues raised by the reference were numerous and complex, and the Commission engaged in extensive consultation with relevant members of the local community. I have already mentioned the difficulties which were caused by reductions in the Commission's resources.

Interest and Activity in Child Welfare Reform. The area of child welfare is one which has attracted a substantial amount of attention, both in Australia and overseas. In all of Australia's States and Territories child welfare laws are, or recently have been, under review, and a number of reports have been produced analysing theories and practices and presenting proposals for reform. In Australia the following are the more important of the recent reports:

New South Wales:

Department of Youth and Community Services, Child Welfare Legislation Review,

Report of the Community Services Project Team, 1974.[2]
Recommendations of the Protection of Children Project Team, 1974.[3]
Recommendations of the Children in Care Project Team, 1974.[4]
Report of Juvenile Offenders Project Team, 1974.[5]
Review of the Child Welfare Act, 1939 — Childrens Courts and Associated Procedures, 1974.[6]
Report to the Minister for Youth and Community Services on Certain Parts of the Child Welfare Act and Related Matters, 1975.[7]
Report of the Child Welfare Legislation Review Committee, 1975.[8]
Report by the Minister for Youth and Community Services on Proposed Child and Community Welfare Legislation, 1978.[9]

Victoria:

Committee of Enquiry into Child Care Services in Victoria, Report, 1976.[10]

Queensland:

Report of the Committee on Child Welfare Legislation, 1963.[11]
Report and Recommendations of the Commission of Inquiry into the Nature and Extent of the Problems Confronting Youth in Queensland, 1975.[12]

Minister for Welfare, Proposed Family Welfare Legislation: Discussion Paper, 1979.

South Australia:

Report of the Royal Commission into the Administration of the Juvenile Courts Act and Other Associated Matters, Part 2, 1977.[13]

Western Australia:

Department for Community Welfare, Report of the Committee on the Future Development of the Juvenile Judicial System in Western Australia, undated.

Tasmania:

Report of the Committee of Review into the Child Welfare Act 1960 (Tasmania) and State Social Welfare Services, undated.

Northern Territory:

A Report of the Board of Inquiry into the Welfare Needs of the Northern Territory Community, 1979.

In the A.C.T., the reference to the Commission was preceded by an inquiry conducted by the Standing Committee on Housing and Welfare of the A.C.T. Legislative Assembly.[14] Overseas there has been a considerable amount of recent activity in the child welfare field. In England there has been a continuous process of reassessment over the last 20 years.[15] Scotland introduced major reforms in 1968.[16] Both in Canada[17] and the United States of America[18] substantial reports on child welfare laws have recently been produced. Indeed, it seems that in many parts of the Western world child welfare policies are under continual review. 'The whole history of child welfare is a history of reform. We are never quite satisfied'.[19]

The Scope and Arrangement of the Report. The terms of reference of the inquiry before the Australian Law Reform Commission specifically required an examination of child welfare laws and practice in the A.C.T.[20] Hence the report is not confined to an analysis of the relevant legislation. In undertaking the task delineated by the terms of reference, the Commission has concentrated on the problems of children in trouble. Most of the report is concerned with procedures for dealing with young offenders, neglected, abused and uncontrollable children. Because reforms in these procedures will be of little value unless the supporting welfare services are functioning satisfactorily, recommendations regarding children in trouble must be combined with an analysis of the operation of A.C.T. welfare agencies. Accordingly, a chapter of the report has been devoted to an examination of the organisation and integration of welfare services. In addition to reviewing methods of dealing with children in trouble, the report also considers child care and the employment of children. The report includes proposed new child welfare legislation for the A.C.T.[21]

Topics for Future Consideration. Limitations in time and resources meant that it was not possible to undertake a total review of all aspects of child welfare in the A.C.T. A number of matters are not dealt with in the report. All are sufficiently important to warrant careful examination. Recommendations are made to bring together A.C.T. agencies and individuals involved in helping children. Several of the matters beyond the scope of this report will doubtless be suitable for examination by the Institute of Family Studies, or other bodies. Amongst the particular issues not addressed in any detail are the special problems of the mentally ill and handicapped children, the guardianship of immigrant children, the special problems that can arise in migrants' child-rearing practices, particular difficulties of Aboriginal children and so on.

METHODOLOGY : CONSULTATION

Consultants. During the course of its work on the reference the Commission was assisted by a number of consultants. They included a magistrate and a number of lawyers. There was also a psychiatrist, a senior police officer and several persons with social work skills. Numerous meetings were held at which all the consultants were brought together to discuss with the commissioners and with each other aspects of the reference. Members of the Commission also held many discussions with individual consultants. The Commission greatly benefited from the contributions made by these consultants.

Discussion Papers. Two discussion papers were published. One, Children in Trouble, appeared in April 1979. The other, Child Abuse and Day Care, was published in April 1980. Both were widely distributed in the A.C.T. and throughout Australia. Both aroused considerable interest. The comments received were of great assistance to the Commission in the preparation of the report.

Public Hearings. Two public hearings were held in Canberra. The first was held on 10 May 1979 and the second on 5 May 1980. The two hearings were well attended. Many observers attended, in addition to those making submissions. In association with the public hearings and discussion papers, the issues before the Commission were discussed by me and by Dr. Seymour in 'talkback' radio programmes and interviews in Sydney, Melbourne and Canberra before audiences of several hundred thousand. As a result of these programs many written submissions were received.

Seminars. In order to bring together persons in the A.C.T. interested in the child welfare field, the Commission organised a series of seminars. Seminars were held for each of the following groups:

- magistrates and lawyers;
- representatives of voluntary agencies;
- members of the Welfare Branch of the Department of the Capital Territory;
- members of the Capital Territory Health Commission;
- members of the Australian Federal Police;
- A.C.T. Schools Authority Guidance Counsellors; and
- A.C.T. Schools Authority School Principals.

Conferences and Meetings. During the course of work on the reference, members of the Commission attended a number of conferences and meetings. These included the national conference on 'The Child, The Family and The Community', held in Canberra, 16—19 March 1979, the international conference 'Total Child Care', held in Sydney 29—30 September 1979, the national conference 'Towards an Australian Family Policy', held in Sydney 8—12 May 1980, the Inter-disciplinary Conference on Child Neglect and Abuse, held in Sydney 24-28 September 1980, and a seminar run by the Human Resource Centre, Department of Social Work, La Trobe University, 9 June 1980, for which I express specific thanks. In addition, many meetings were attended with interested groups.

Children's Views. When enquiring into child welfare matters it is obviously of the utmost importance to endeavour to obtain the views of those most affected. Accordingly, the Commission arranged a series of visits to a number of A.C.T. schools in order to obtain the opinions of young people. Members of the Commission visited six schools and there spoke with children of all ages. Discussions were also held with children in homes run by Dr Barnardos and in the Quamby Children's Shelter.

METHODOLOGY : SURVEYS

Absence of Statistics. At the outset of its inquiries the Commission became aware that there were no adequate statistics on the operation of the child welfare system in the A.C.T.[33] Neither the courts nor the police nor the Welfare Branch of the Department of the Capital Territory produce comprehensive statistics of the cases handled and the outcome of such cases.[34] Aware of the danger of making recommendations based on 'impression and anecdote rather than solid evidence'[35], the Commission was faced with the task of assembling its own statistical

information. This it did by carrying out a number of surveys. The compilation of statistics should not be viewed as the pursuit of knowledge for its own sake. It is impossible to understand the impact of legal measures without adequate statistical information.[36] Lawmakers must act in the dark if they are not supplied with satisfactory statistics on the operation of the laws which they enact. The collection of A.C.T. child welfare statistics should certainly be greatly improved.

Children's Court Statistics. An analysis was prepared of all A.C.T. Childrens Court cases which were completed between 1 June 1978 and 31 May 1979. This analysis permitted the Commission to examine the types of offence which brought the children before the court, the number of neglected and uncontrollable children who appeared before the court, the age and sex of the children involved, and the orders which resulted from their appearance before the court.

Recidivism Study. In order to obtain some information about re-offending rates among young offenders who appear before the A.C.T. Childrens Court, the Commission conducted a recidivism study. A list of convicted offenders was forwarded to the Australian Federal Police, who checked their records for any subsequent court appearances.

Welfare Branch Files. The principal government body responsible for the provision of services required under the A.C.T. Child Welfare Ordinance is the Welfare Branch of the Commonwealth Department of the Capital Territory. In order to obtain as full an understanding as possible of the work of the this Branch, the Commission undertook a study of all available Welfare Branch files compiled during 1977 and 1978. Valuable information was extracted regarding the work of the Branch and the types of cases with which it has to deal.

Police Contacts with Children. To gain a better understanding of police procedures in the A.C.T. and to gain information about the use made of police warnings, the Commission conducted a survey of police contacts with children. Members of the police were, between 1 June and 30 August 1979, asked to complete a brief questionnaire every time they dealt with a child. The results of this questionnaire are also referred to in the report.

Children who are Charged. Whenever a person, adult or child, is arrested and charged with an offence, the details of the charge must be recorded in a police Charge Book. The Commission undertook an analysis of the 1978 Charge Books in order to learn in what circumstances children are charged, and also to learn in what situations children have their fingerprints taken and are photographed. The report is based on all of this data - factual and opinion, statistical and impressionistic.

LIMITS OF COMMONWEALTH POWER

I have said that the Commonwealth does not have plenary power to deal with improvement in child welfare laws throughout the country. This is basically a State responsibility under our Constitution. Nevertheless, the Commonwealth does have responsibility in the Territories. The ordinance of the Australian Capital Territory has been criticised in the courts on a number of occasions. It has also come under criticism in the news media and elsewhere.

In addition to the general powers in the Territories, the Commonwealth has a special power to make laws with respect to 'marriage' (s.51(xxi) of the Constitution) and 'divorce and matrimonial causes : and in relation therto, parental rights and the custody and guardianship of infants' (s.51(xxii)). It is pursuant to these powers that the Commonwealth has established the Federal Court of Australia. However, the power with respect to child custody and guardianship is not at large. It is limited to a power to make orders ancillary to divorce and matrimonial causes.

INTERVENTION V. DUE PROCESS OF LAW

A major controversy which faces all those who seek to reform child welfare laws in Australia. It is whether, put generally, an 'interventionist' and 'welfare' approach should be taken to child welfare laws or whether the approach to be adopted should reflect the principle that a child is entitled to the 'due process of law', at least to the same extent as an adult accused.

> A simple case illustrates the issue before the law.
>
> Jenny, aged 14, has run away from home. She has some psychiatric problems and is bitterly at odds with her mother. Her father is in prison and her mother has had a series of liaisons with other men and displayed little interest in Jenny. While away from home Jenny commits a number of minor thefts. (The Law Reform Commission, DP 9, Child Welfare : Children in Trouble, 1979, 15)

Legal systems have developed some basically different approaches to Jenny's problem. The choice between them (or the discovery of some compromise) is a matter under consideration in the various Australian inquiries on reformed child welfare laws.

The first general approach is what might be called the 'interventionist' or 'welfare' approach. This is in part a reflection of the 20th century's assumption that the government, on behalf of the whole people, has a special welfare responsibility for people in need of help. It is said that Jenny's problem should be looked upon as a fundamental social welfare condition and that her minor thefts are no more than symptoms of this welfare need. The paramount guiding principle should, according to this view, be the needs of the child. We should be not too troubled about the letter of the criminal law and that fact that Jenny has committed what statutes declare to be a crime. It is better to use any legal process, including in court, as an opportunity to diagnose her 'basic problem' and to help to restore her to good society. It is said that it is 'typical of lawyers' to deal with the superficial criminality of Jenny's particular conduct whilst ignoring the underlying cause for such criminality which will not go away, simply by the imposition of some criminal punishment : caution, fine or custodial detention.

In short, it is said that we should turn Jenny, and possibly her family, over to social welfare workers who should endeavour to get to the bottom of the problem and provide social assistance that will rescue Jenny from the family and personal predicament that has led her to commit crimes.

The other approach is what may be called the 'due process of law' approach. According to this view, there are limits upon the extent to which society should countenance an endeavour to improve Jenny and her family. Cases are instanced of too great an interference in personal conduct, appearance and morality, in an endeavour to stamp on an individual the dull blanket of ordinariness. It is said that however well motivated, social welfare workers have not been notably successful in curing the 'underlying disease'. What should be done in Jenny's case, for example? Should the law forbid her mother from having liaisons? Can the law command Jenny's mother to love Jenny? Are there enough funds to provide Jenny with divertisements that will take her mind off her mother's indifference? How can the law force Jenny's parents, who are utterly innocent of any actual criminality, to attend to Jenny? Would such a law be successful anyway? Does society have the right, in the case of such minor crimes, so grossly to interfere in the family situation as to remove Jenny from the care of her parents? Is there any guarantee that doing this will lead to a better result in the long run?

Supporters of the 'due process' school assert that social welfare workers, seeking to help Jenny and her family, become more oppressive even than the criminal law. They use the courts as a first port of call. Yet courts are not, according to most lawyers, the best places in which to achieve reform and improvement. They are places of fear and intimidation for most citizens, especially for young people. According to this view, there

should be more not less control over the impact of the criminal law on young people. The protections for them and the assurances of due process of law should be strengthened not weakened. However well intentioned, it is said, the effort at a social welfare approach to child criminality and wrongdoing becomes more oppressive even than the criminal justice system and at no assurance of success for the price paid.

These are not theoretical debates. They are reflected in the approaches taken to child welfare laws in a number of countries with a society similar to our own. The interventionist approach, for example, is reflected in the Scottish law. There a 'hearing' takes the place of a formal court proceeding. If a child pleads guilty he or she does not have to go to court but comes before three laymen sitting in the 'hearing'. They have more limited powers than a court but they can order a period of supervision and even that a child reside in an institution for a time.

I have been told in England of cases before such 'hearings'. What begins with an inquiry into why a child took this or that article from a store ends of a detailed investigation of the child's social and moral conduct. Complaints are made by parents that the child uses lipstick, stays out late, sees boyfriends and so on. The hearings become something of an inquisition into the 'whole child'. Supporters say that is as it ought to be. Opponents say that such a response to relatively minor offences would be regarded as outrageous in the case of adults and should not be tolerated in the case of children.

In the United States, the 'due process' principle is fairly strictly observed, chiefly for constitutional reasons. Dealing with a child on a criminal matter, it is required that the child should be given every protection of the criminal law. The efforts to establish a Childrens Court that combines a more deliberately beneficient approach with relaxation of procedural safeguards was declared unacceptable by the Supreme Court of the United States in an important decision. Re Gault, 387 US 1 (1967).

OTHER ISSUES

Children and Police. In addition to the design of the appropriate machinery for deciding cases where children have come into contact with the criminal law, a number of other important issues are under study. Amongst these perhaps the most important is the relationship between the police and young people suspected of offences. In the case of interrogations, the Australian Law Reform Commission, in its report on Criminal Investigation (ALRC 2, 1975), put forward requirements that parents or other responsible and independent people should be present during an interrogation by Commonwealth

Police Officers of a young person. Furthermore, certain formalities were prescribed and these have generally been followed in the past and are reflected in the Federal Government's Criminal Investigation Bill 1977 and in the New South Wales Child Welfare (Amendment) Act 1977 (No. 20) and Child Welfare (Further Amendment) Act 1977 (No. 100).

But many cases do not get to court or even to interrogation. Sometimes people administer warnings to young peopole. In favour of this system is the informality of the procedure, the speed with which it is administered and the lack of stigma that attaches to this form of punishment. Against police warnings is the element of discretion that is involved, which discretion may be entirely unreviewed by the independent judicial arm of government. It is said that there is discrimination in the administration of warnings and that children in wealthy areas are more likely to be cautioned than the children of the poor. It is also pointed out that nowadays, with computerisation, the keeping of a list of children 'warned. has begun, yet such children may never have been found guilty by a court of law.

This debate is a difficult one and different police policies exist in Australia towards the administration of warnings. Generally speaking, in the Capital Territory relatively few warnings are administered, certainly of a formal kind. Most cases are submitted to court. In Victoria, the Chief Commissioner has issued instructions which encourage the giving of a warning, particularly in the case of first offenders and minor crimes. A choice must be made here between competing philosophies.

Screening Procedures. Another controversy surrounds whether screening devices should be adopted to keep cases out of court. Various mechanisms have been tried:

(a) In New Zealand a small committee comprising police and welfare workers makes a recommendation in most cases to a senior police officer as to whether a case warrants proceeding to court. The final decision is with the police but a welfare point of view is guaranteed by the procedures of consultation.

(b) In Scotland, a 'reporter', an independent official, examines the case and decides whether no action should be taken, whether the matter really requires social welfare assistance or should be referred to a a 'hearing' instead of the ordinary courts.

(c) In South Australia and Western Australia a system of panels has been introduced, generally comprising police and citizens, as an alternative to the Childrens Court, which can deal with a matter and administer relatively minor punishments, without the necessity of the matter proceeding to trial. The recent legislative memorandum issued by Mr. Jackson indicates that the New South Wales legislation will introduce a screening panel procedure.

(d) In Commonwealth offences (eg damaging a telephone booth) a procedural device has been implemented admninistratively by which no action is taken against a child or young person without the approval of the Secretary of the Federal Attorney-General's Department.

These mechanisms are all aimed at diverting as many cases as possible away from the atmosphere of the crimsinal courts. The greatest Australian controversy now surrounds the success of panels. In favour is the fact that these procedures involve the family of the child, provide an occasion for considering welfare help, avoid criminal courts and have been shown to have good results in rehabilitation and the avoidance of repeat offending.

On the other hand, critics say that panels of this kind put undue pressure upon a child to plead guilty and to forfeit his right to have the matter determined according to law. Only if the child pleads guilty can he or she avoid the criminal court. In a small community, involvement of many citizens in panels of this kind can diminish the privacy that otherwise attaches to proceedings against children. It is said that panels comprising policemen, or even former policemen, are hardly unbiased in their attitude to the conduct complained of. It is suggested that the cost of this form of diversion is not worth the results. If there are few re-offenders, it is probable that a more informal procedure of police warnings would have had the same outcome. This, then, is the debate about panels. It seems another good idea. But the reformer must always ask whether the net result is better than the situation sought to be reformed or whether consequences of a proposed reform would not be more unpalatable than even the present situation is.

Other Issues. There are many other issues that are being considered by the Law Reform Commission in its review of child welfare laws. Amongst these are:

(a) Whether a child and/or his parents should be given access to welfare reports upon which decisions may be made affecting his liberty.

(b) Whether as a matter of routine, representation by lawyers or other persons should be afforded to every child who comes before a court.

(c) Whether the offence of being a 'neglected child' should be redefined so that the child commits no offence.

(d) Whether the offence of being 'uncontrollable' and other similar status offences should be spelt out with greater specificity so that vague complaints of unorthodox conduct do not become lumped into an ill-defined and oppressive criminal regime.

(e) Whether doctors and other professions should be obliged to report to authorities suspected cases of child abuse.

CONCLUSION

The issues set out in this talk represent hard, practical questions that must be faced in any review of child welfare laws. Any attempt to improve the way in which the law deals with delinquency and misconduct in children will have to consider the questions I have outlined, and many others. It is important that our help to children should not be left at the level of generalised resolutions or sentimental statements. It is also important that we should not fall victim to complacency and self-satisfaction in this area. On the contry, we must be vigilant to ensure that the laws and practices of our own country are as modern, fair and simple as we can make them.

I wish to close by expressing my appreciation to the Legal Studies Department and Human Resource Centre of La Trobe University and the Australian Legal Workers' Group for organising this meeting of concerned people. I also wish to thank and congratulate the participants in the seminar. Although it is certainly not possible to secure bland agreement upon all of the issues that arise in child welfare reform (for no other project of the Law Reform Commission has been so replete with deeply felt controversy) I am sure you will agree with me about one thing. Law reform, especially in an area such as child welfare, should not proceed behind closed doors. It should not be the preserve of lawyers only. Nor should it even be the preserve of the experts only. It should not ignore the views of children. It should not overlook the opinions of different disciplines (legal, medical, welfare, police), however difficult it may be to reconcile the differing directions in which they might take us. Law reform, particularly in a matter so sensitive and controversial as this, should be conducted in the open. It should encourage the greatest possible community participation. It should promote interdisciplinary contact. It is for that reason that I applaud the initiative of the University and the Legal Workers' Action Group. I see this seminar as part of the process of open government, contributing to the road of reform, not only in Victoria but throughout our country. Though it comes too late to provide input to the actual report and recommendations

of the Law Reform Commission and though it comes too early to provide a forum for the evaluation and criticism of our report, it will be a most useful contribution to the national debate. The record will be available to lawmakers as they proceed to consider reform of the law. But law reformers, law makers and participants in this conference should keep steadily in mind the advice of Professor Kahn which I have earlier cited:

> The whole history of child welfare is a history of reform. We are never quite satisfied.