THE SECOND AUSTRALASIAN CONFERENCE ON CHILD ABUSE

BRISBANE, 23 SEPTEMBER 1981

KEYNOTE ADDRESS NO. 6

CHILD ABUSE : WHAT CAN THE LAW DO?

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

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THE LAW'S RESPONSE

This is roughly the half-way point of an international conference of great importance, dealing with a subject as perplexing as it is sensitive. There is a real risk that on the third day of such a conference the concentration will begin to lapse. There is neither the heady enthusiasm of the first hours nor the anticipated pulling together of the threads that will accompany the closing phase of the conference.

A somewhat acid Vice-Chancellor of my acquaintance once defined a conference as a place where people got together who individually could do nothing and who, collectively could agree, that nothing could be done.

In the area of child abuse, and in particular in the subject assigned for my talk, the law's response, there is a real risk that little effective help can be offered by the law, its institutions and personnel. Indeed, there are some who feel that the lawyer's intervention, in at least the majority of cases of child abuse, is positively counter-productive : likely to undermine rather than to reinforce the relationship between the abusing parent or guardian and the abused child. Certainly, the fundamental problem which the law faces in dealing with instances of child abuse is that it occurs, usually, in the relationship between people linked by blood. That link cannot be erased by actions in a courtroom. The abused and the abuser will continue, whatever the law says or does, to be bonded by blood. It is in cases of this kind that the law's interventions must be specially careful and sensitive. Otherwise, like Rosencrantz and Guildenstern in Hamlet, we lawyers, police, judges and magistrates run the risk of stumbling foolishly on to the stage of personal relationships, adding a few irrelevant words to the drama and then shambling haplessly off, whilst the major dramatis personae remain, seeking to sort out their personal relationships despite our intervention.

The papers already produced to this conference, and those still to come, disclose the range and variety of child abuse. Unfortunately, extreme cases of abuse can lead to the death of the child. Other cases can lead to repeated physical or other damage. Sexual interference, even in our comparatively liberated age, can leave scars which may never be erased. The law, speaking for the whole of society, and seeking to state society's minimum standards, must stand ready, sometimes, to punish the wrongdoer, to prevent repetition, to uphold proper conduct and to point those with problems in the direction of those who can help. It must do so, even at the risk of doing occasional damage and complicating the situation. For if it is to stand idly by, a particularly vulnerable group of victims may suffer and particularly unacceptable conduct may go unadmonished.

When I accepted the invitatation to deliver this address, I assumed that I would be in a position to speak to you today about the recommendations of the Australian Law Reform Commission on the subject of child abuse. The Commission received a reference from the Commonwealth Attorney-General to prepare a report on the reform of the child welfare laws of the Australian Capital Territory. In Australia, the law governing child abuse is basically State law. I am a Federal officer and head of the Australian Federal Law Reform Commission. The Federal responsibility for this subject is substantially confined (outside the area of the provision of social services) to the Australian Capital Territory. It is in that Territory that we have examined the subject. We have produced a report which will shortly be received from the printer. It must be tabled in the Federal Parliament by the Attorney-General. Its tabling can be anticipated before the end of the current Session of Parliament. But the Attorney-General has not yet received the report and it has not yet been made public. In these circumstances, I know that you will understand that it is simply not possible for me to disclose in detail the recommendations of the Commission. This is frustrating, of course. But there remains plenty for me to talk about. In the course of our inquiry we had to examine legislation throughout Australia on the subject of child abuse. We were required to analyse the issues that must be addressed in every jurisdiction when lawmakers and those who advise them turned to face the question : what can the law do to respond to this most difficult and vexing of the problems of protecting children's welfare.

WE ARE NEVER QUITE SATISFIED

At an earlier international conference dealing with this among other subjects, a noted international expert declared that the whole history of child welfare was a history of law reform. It was so, he claimed, 'because we are never quite satisfied'.[1] Strength is given to this statement, in the context of child abuse legislation, by a number of recent moves in Australia. In Victoria, the government announced its intention not to proceed with legislation for compulsory reporting of cases of suspected child abuse but rather to rely upon voluntary reporting with full protection for those who bona fide and reasonably report. In New South Wales, a new Community Welfare Bill has been published and was on the table of the New South Wales Parliament when it was dissolved for the recent elections. It contained comprehensive provisions following a most thorough review of current legislation. In the Capital Territory, the Law Reform Commission's report will shortly be before the government, with major proposals and an entirely new draft Ordinance. A committee of inquiry has been established in the Northern Territory to carry forward a review of the laws of that Territory.

In Queensland, the Parliament as recently as 1980 passed the Health Act Amendment Act 1980. Amongst other things, that Act made it mandatory for a medical practitioner who suspected maltreatment or neglect of a child to report the same to the Director-General of Health and Medical Services. The amending Act also included other provisions establishing the framework under which action could be taken in the child's interests, including by way of temporary custody. If I can be permitted to say so, a most useful initiative was taken here in Queensland by the production of a short booklet by the Co-ordinating Committee on Child Abuse established by the Queensland Cabinet. This booklet, introduced by the former Minister, Sir William Knox, explained in simple and direct language the provisions of the 1980 amending Act and the procedures to be followed by medical practitioners complying with that Act. I applaud this innovation because all too frequently legislators, even in the realm of socially controversial legislation that secures coverage in the media, assume that those affected by new laws somehow get to know of them by a magical process of osmosis. The law deems everyone to know the law. Realism requires us to acknowledge that even diligent and expert lawyers find it difficult nowadays to keep pace with the rate of legislative change.

Beyond the 1980 legislation, the Queensland Minister for Health recently announced further moves to tackle the problems of child abuse in Queensland. On 14 July 1981 he announced his intention to seek State Cabinet approval for legislation 'to give police and doctors more power to ensure victims are taken into care, when they have reasonable grounds' to suspect that 'they have been maltreated or neglected'.[2] Mr. Austin said that he believed that the 81 cases of child maltreatment reported in the last six months of 1980 were merely 'the tip of the iceberg'. He also said that, to disguise a pattern of child abuse, some parents 'shopped around', attending various doctors and hospitals. Others escaped reporting by contending that the damage done was merely discipline of the child. Mr. Austin recently informed me that the initiatives announced in his press release are still under the consideration of the Queensland Government.[3] Initiatives at the legislative and administrative levels parallel important research that has been going on in this State, to expand knowledge of the patterns of child abuse, and the symptoms that should be looked for. I have no doubt that many members of this conference are aware of the important research being done by Mr. Nixon and Dr. Pearn of the Department of Child Health in the Royal Children's Hospital, Herston:

> To the spectrum of acute physical violence, thermal injury, sexual abuse, deprivation and poisoning, has been added the subacute concomitants of dermatitis and infection and anaemia. Nutritional neglect ... is also part of the syndrome. In recent years it has been further appreciated that general neglect for a child's wellbeing and safety, and specific acts of abuse are spectral variants of the same syndrome.[4]

Now a further extensive study in Brisbane has identified the pattern of non-accidental immersion in the bath. It is a particularly difficult instance to categorise as 'child abuse' because unlike acute physical trauma such as a head blow, the post-injury signs are more difficult to discern with certainty and to fix with serious legal consequences.[5]

Having established that lawmakers in this field are 'never quite satisfied' I propose to devote the balance of this talk to an analysis of current law and practice in the States of Australia, to identify a number of the specific topics which confronted our study in the Australian Capital Territory, to rehearse the arguments for and against compulsory reporting and to mention some of the issues to which legislation on child abuse must be addressed. I do assure you that it is not an academic subject in Australia to go over this ground. As I will show, a large number of jurisdictions in this country do not provide for compulsory reporting of suspected cases of child abuse and such legislation as exists varies significantly from jurisdiction to juirisdiction.

CURRENT LAW AND PRACTICE

Reporting Legislation. In Australia, a great deal of legislation has recently been enacted relating to the reporting of child abuse, definitions of child abuse, specification of the recipients of reports, and emergency hospitalisation and holding provisions. What follows is a summary of the main provisions. There is no reference to criminal offences and penalties incurred in this context. It might be noted that Tasmania is the only State in Australia which has a separate Act dealing with child abuse. In New South Wales, South Australia, Queensland and Tasmania, legislation provides that medical practitioners have a compulsory duty to report where evidence of maltreatment comes to them in the course of their professional duties.[6] In South Australia the classes of persons required to make reports include not only any medical practitioner but also any registered dentist, any registered or enrolled nurse, any registered teacher, any member of the police force and any employee of an agency established to promote child welfare or community welfare.[7] In Tasmania the classes of persons required to make reports are medical practitioners, probation officers, child welfare officers, drug and alcohol welfare officers, holders of boarding home and day nursery licences, school principals, kindergarten teachers and mental health workers (psychiatrists, social workers and welfare officers).[8] In Victoria, as I have said, the Government has decided to maintain voluntary reporting and evaluate the results of other States' mandatory reporting before giving further consideration to the introduction of mandatory reporting.[9] New South Wales, Victoria, South Australia and Tasmania also provide for voluntary reporting by any person who has reasonable grounds to suspect that child abuse has occurred.[10] Where compulsory or voluntary reporting legislation exists there is extended to the person making the report legal immunity from civil liability for breach of professional ethics, defamation, malicious prosecution, or conspiracy. In Western Australia[11] and the Northern Territory there is no reporting legislation.

Reportable Conditions : Defining Abuse. Child abuse as a condition requiring compulsory reporting is defined differently in each State law. In New South Wales notification must be made where there is a reasonable suspicion that a child has been 'assaulted, ill-treated or exposed'.[12] In South Australia the duty arises where there is a suspicion upon reasonable grounds that the child has been maltreated or neglected or caused to be maltreated or neglected 'in a manner likely to subject the child to unnecessary injury or danger'.[13] In Queensland the duty arises where there is a suspicion on reasonable grounds that a child has been maltreated or neglected 'in a manner ... likely to subject the child to unnecessary injury, suffering or danger'.[14]

In Tasmania the legislation requires reporting where a child 'has suffered injury through cruel treatment', a child being regarded as having suffered cruel treatment notwithstanding that the treatment was not intended to be cruel or was not intended to result in injury to the child. 'Cruel treatment' may be constituted by neglect or failure to perform any act required for the welfare of the child.[15] In Victoria a voluntary report may be made where a person believes on reasonable grounds that a child is in need of care for any of the reasons specified in the legisation. The reasons include the child's being ill-treated, exposed or neglected, inadequately supervised or controlled, or the child's guardians being dead or incapacitated or jeopardizing the child's physical or emotional development or abandoning the child.[16]

Recipient of the Report. With one exception, no Australian legislation nominates the police as a recipient of the report, probably because it is thought that such a provision would discourage reporting in some cases through fear that a parent would be likely to be prosecuted. In New South Wales the report is to be made to the Director of the Department of Youth and Community Services who is finally responsible for appropriate action in all notified cases including the making of a decision as to the involvement of the police.[17] Upon the introduction of compulsory reporting, the 'Montrose' Child Life Protection Unit was set up by the Department.[18] 'Montrose' receives notifications upon behalf of the Director of the Department of Youth and Community Services. In Victoria the report may be made to a member of the police force or to any person who, or children's protection agency which, is authorised in that behalf by the Minister for Community Welfare Services.[19] In 1980 there commenced a Government funded program, enabling the Children's Protection Society to develop child protection units in ten regions of Victoria. In South Australia notification is to be made to an officer of the Department of Community Welfare[20], who reports the matter to the appropriate regional panel.[21] In Tasmania notifications are made to the Child Protection Assessment Board.[22] The South Australian panel and the Tasmanian board are small multi-disciplinary bodies which have power to decide upon appropriate action in each case.[23] In Queensland the report is made, as I have said, to the Director-General of Health and Medical Services.[24] In Western Australia, a Child Welfare Protection Unit, established in 1970, receives reports on an informal basis. The Unit is part of the Department of Community Welfare.

Hospitalisation and Holding Orders. In New South Wales the Director of the Department of Youth and Community Services or a police constable may serve a notice upon parents requiring presentation of a child to a medical practitioner.[25] Upon a failure to comply, a constable may enter and remove the child, if need be by force. The Director is deemed to have custody of the child during the medical examination for up to 72 hours. In South Australia a child who has been admitted to hospital or a prescribed institution and whom the Director suspects upon reasonable grounds to have been the subject of maltreatment or neglect, may be lawfully detained for 96 hours against the will of a parent, guardian or person entitled to custody.[26] There are similar provisions in Queensland[27] and Western Australia[28], but the period of detention in the latter State is limited to 48 hours. In Tasmania an authorised officer of the Child Protection Assessment Board may require a parent or caretaker to take an abused child to a hospital for the purpose of his being examined by a paediatrician, or where it is not reasonably practicable for the parent to do so, may take the child himself. Where such a requirement is not complied with or there are reasonable grounds for believing that if such a requirement were made it would not be complied with, a justice may issue a warrant authorising a police officer to remove the child and take him to a place of safety. In any case the child may be detained for 72 hours following admission to the hospital or place of safety.[29] The Board may apply to a magistrate for a child protection order, which allows a child to be taken to and kept in a place of safety for a period of up to 30 days. The order may be extended for a further 30 days and may be revoked. The Board's application may be heard ex parte.[30] A police officer (who may be accompanied by a doctor or authorised person) may by warrant enter premises, if need be by force, to remove the child. In the Northern Territory, a child may be taken to a 'place of safety', which includes a hospital, until he can be brought before the court or until a period of 14 days has elapsed, whichever first occurs.[31] The section seems to assume that court proceedings would follow the detention. In Victoria there is no specific provision for a hospital or prescribed institution to detain a child.

PROBLEMS IN THE A.C.T.

Lack of Statistics. It is virtually impossible to ascertain the true incidence of child maltreatment in any community, including the A.C.T. At present no statistics concerning child abuse are collected at a Commonwealth level.[32] Before a national assessment of the problem can be made, a common or at least generally comparable definition of child abuse must be agreed upon. The survey conducted by the Enquiry into Non-Accidental Physical Injury to Children in South Australia, 1974—75, showed a wide discrepancy between the number of cases officially reported and the number of cases the survey revealed.[33]

Upon the basis of those figures the Royal Commission on Human Relationships estimated in 1977 that the incidence of non-accidental physical injury to children under 15 in Australia could well be as high as 13,500 cases a year or 37 children injured every day.[34] The Royal Commission emphasised the grave nature of many of the injuries received by children.[35] The South Australian survey showed a mortality rate of 5-10%.[36] The number of cases of child abuse which come to notice in the A.C.T. is very low.[37] However, as has been mentioned, the cases which are actually recognised, reported and labelled may well be, as Mr. Austin claims, only 'the tip of the iceberg'.[38] It has been said, 'there is no connection whatsoever between the available statistics and reality of this particular issue'.[39] It could be useful if this conference were to add its voice to the many calls for the need for national agreement in Australia upon a common or generally comparable definition of child abuse, so that a better idea of the measure of the problem could be had by lawymakers and administrators. I am glad to see that at least one paper has been directed to this end. Reporting child abuse, of its own, does little to solve problems. It is a means to the end of a better social response to the incidence of child abuse.

Immunity from Civil Liability. The absence in the A.C.T. of legislation conferring immunity from civil and professional liability on persons who report suspected child abuse in good faith has been one factor obstructing the development of smooth relationships between the voluntary and statutory agencies working in the field. This problem is not confined to medical practitioners who wish to avoid a breach of professional ethics or a departure from accepted standards of professional conduct. Other professionals, such as teachers and child care workers, also fear or are uncertain about liability for defamation, malicious prosecution or conspiracy or for breach of professional discipline.[40] Clearly, any reporting legislation should include provisions protecting persons who notify in good faith. This view was strongly supported before the Law Reform Commission by the Department of the Capital Territory.[41] The need for protective provisions was emphasised by the United States Juvenile Justice Standards Project.[42]

Lack of Authority in Emergency Cases. Sometimes the police feel compelled to remove a child without parental consent and without charging the child with being a neglected child, still the procedure followed in care cases in the ACT. In these cases the child is usually placed in Marymead Children's Centre. This home lacks legal authority to detain the child in safety against the wishes of a violent parent. Nor does the home have the authority to provide for his medical needs.

There would appear to be a clear need for hospital and some other institutional authorities to have power to detain a child who requires medical examination or simply protection, free of the threat that the parent may remove the child.[43] The Child Welfare Ordinance 1957 (A.C.T.) does not make provision for a holding order to facilitate emergency hospitalisation of the child or detention in a place of safety for a limited period upon the authority of the police or welfare or health personnel.

COMPULSORY REPORTING

Arguments for Compulsory Reporting. I have already shown that, in Australia, it is not hypothetical to debate the arguments for and against compulsory reporting. Some jurisdictions have provided for it. Others have specifically rejected the notion. The medical profession, including quite recently and at a national level, has expressed reservations about (and even opposition to) the notion of compulsory reporting legislation, so warmly embraced by other caring sections of the community. Let me briefly rehearse some of the principal arguments for and against compulsory reporting.

. Role of the law in protecting the child. Children need special protection by the law because they have fewer means to help themselves. Moreover, the child's right to preservation of his health and life outweighs the right of a family to freedom from interference. Compulsory reporting, therefore, underlines the law's commitment to the protection of children.

. Facilitating reports. The introduction of comprehensive compulsory reporting legislation is invariably accompanied by an increase in the number of cases coming to notice.[44] It may be because of the sanction attaching to a failure to report, or because of an improved community awareness of the problem due to publicity surrounding enactment of the legislation. Alternatively, the increase might be the result of the establishment of crisis centres or new procedures for access to supporting services, introduced simultaneously with the legislation. It would, however be erroneous to suggest that any increase in the number of cases coming to notice may be interpreted as an indication of an increase in the incidence of child abuse.[45] There is no apparent reason why reporting legislation in the A.C.T., together with improved access to supporting services and an increased community awareness of the problem, should not be accompanied by an increase in the number of reported cases of child abuse.

. Research, statistics and prediction. There is a need to know the incidence and location of child maltreatment. The indirect benefit of compulsory reporting legislation is the development of statistics which would assist in the identification of social and geographical areas where child abuse is more prevalent. Once identified, such areas would gain priority in the establishment of crisis centres or nurseries for the care of children for periods of a few hours or days. Further, compulsory reporting makes possible the establishment of a central register of cases. Because children who have been abused may be presented at any of several hospitals, or to different medical practitioners, upon different occasions, a register assists in the detection of child abuse and assessment of the risk of re-occurrence in any particular case.

. Advantage in loss of choice. The position of the medical practitioner and other helping professional is made easier in his relationship with parents as he is able to explain that he is compelled by law to notify the appropriate authority. The trust between medical practitioner or other professional and patient is not lost because the former clearly has no choice in the matter.

. Multi-disciplinary decision. Some professions display an unwarranted scepticism about involving those in other fields. With compulsory reporting a professional is relieved of sole responsibility for exercising a discretion as to the action to be taken and the benefit of multi-disciplinary training and experience is brought to bear. Child abuse is too complex a problem for any professional to deal with alone.

. Public commitment. Legislation represents a public commitment to protecting abused children and enables the community to become involved in achieving that end. It should compel the generation of adequate services.

Arguments Against Compulsory Reporting. The following are usually advanced as the arguments against compulsory reporting of suspected cases of child abuse:

. Discouragement from seeking help. Parents and caretakers may be discouraged from seeking help, especially medical attention, for children they have injured, in the knowledge that reporting may result.

Breach of confidentiality.[46] A doctor who discloses to a third party the details of a patient's condition is in breach of his duty of confidentiality to the patient. The requirement of strict confidentiality in the doctor-patient relationship is an element of professional medical ethics which is at least as ancient as the Hippocratic oath.[47] It is reflected in the common law[48] and in the Australian Medical Association's Code of Ethics.[49] An A.M.A. member who breaches the ethical code could be subjected to internal disciplinary measures by the Association, being censure or even exclusion from membership. Moreover, especially in a relatively small community such as the A.C.T., it would be virtually impossible to keep reports confidential. The fact of notification might soon become public, forcing other cases 'underground'[50], and (especially if not subsequently upheld by a court or other authorities) might do real harm to a private medical practice.[51]

Further violence. There is no proof that compulsory reporting does not put as many children at risk as those whom it assists. A report may precipitate a further incident of physical abuse or prolonged emotional maltreatment and withdrawal of the family from neighbours and other persons who may otherwise have provided assistance.

Unenforceable obligation. Provisions for compulsory reporting are virtually unenforceable. The community is generally averse to prosecuting medical or other helping professionals who act in good faith. If a charge were laid, it would have to be proved beyond reasonable doubt. The practitioner would in many cases be in a strong position to argue that he did not know the abuse had occurred. Moreover there are evidentiary limitations on the acceptance of uncorroborated testimony by children.[52] One practising A.C.T. medical practitioner appeared before the Commission's public hearing. His view was that medical practitioners would not report if compulsory reporting was introduced.[53] In these circumstances he suggested that every effort should be directed at facilitating voluntary reporting rather than passing a law which would not be observed.

No simple solution. Reporting legislation does not guarantee effective services and there is danger in the adoption of the belief that legislation solves the problem. There is a grave danger that cases may be reported and yet prompt action may not result because of lack of staff in over-extended services.[54] The emphasis should be on making services available and acceptable, rather than on the imposition of legal obligations.

. Professional's discretion. It is preferable to leave to the medical practitioner or other professional the discretion to decide whether, taking into account any particular or unusual circumstances, a case should be reported. The professional is in the best position to assess the desirability of jeopardising the relationship of trust and also bears the financial and emotional consequences of any breach of professional confidentiality.

. Problem of definition. There is great difficulty involved in defining child abuse, not only with regard to the inclusion or otherwise of emotional or sexual abuse, but also with regard to distinguishing such cases from cases of neglect. The area is too vague to allow for legislative definitions of the circumstances in which a duty to report arises. Confusion as to whether a case comes within the definition will probably lead to a failure to report.

I am not in a position at this stage to debate these arguments. Nor may I disclose the recommendation of the Law Reform Commission. Clearly we have not heard the end of the debate about compulsory reporting in Australia. But I must add a word of caution. The passage of legislation providing for compulsory reporting is the easy task. Of itself, it solves no single or social problem. We must beware of the trap of believing that legislation of any kind, and particularly enhanced powers of the authorities, will, of itself, solve the delicate and sensitive issues raised by even a single case of suspected child abuse.

MATTERS WHICH THE LAW MUST CONSIDER

Briefly, and in conclusion, I turn to a catalogue of the matters which, I believe, our law on child abuse must confront.

The first topic, plainly enough, is a definition of the case where 'child abuse' requires the intervention of professionals, the police and a court. The great part of this conference tomorrow will be devoted to the problem of definition. Among issues to be addressed is whether reporting provisions, contained in statutory definitions of child abuse, should be extended to cases where a child is suspected of being 'in danger of' being assaulted, ill-treated or exposed. Some witnesses before the Law Reform Commission expressed reservations about such an extension, though it was recommended in the NSW Green Paper.[55] The objections can be summarised as the fear of the 'foresight saga', ie the danger of invoking officialdom, not on events that have already occurred but on events which may or may not occur.

Another issue is whether psychological and emotional damage should be included in the definition. One can see the signs of a body blow. One can even perhaps see and prove some signs of non-accidental immersion. The scars left by emotional coldness or psychological trauma may be just as real. But they are harder to establish to a doctor, policeman or judicial officer.

Another issue for consideration is who should be protected against voluntary reports and, if compulsory reporting is introduced, who should be specified in the class of mandatory notifiers. The National Women's Advisory Council has pointed out that professionals such as schoolteachers, kindergarten and pre-school teachers and child care workers are, through their regular day-to-day contact with children, often aware of child abuse long before it is brought to the attention of a medical practitioner.[56] It can be argued that a vague formulation of the category of persons required to notify should be adopted rather than a detailed list set out in legislation and possibly, by oversight, failing to include a class of persons who ought compulsorily to be required to notify. However, such a course has not been adopted in any Australian reporting legislation so far. Where compulsory obligations are imposed by legislation, and particularly where they are supported by criminal sanction, it is important that the legislation should be clear. Those who are under a statutory compulsion should know precisely those who are caught up, so that there is no argument about personal duty and entitlement. In the course of its inquiry, the Australian Law Reform Commission found distinct differences between differing professional groups concerning the scope of the obligation to report, if mandatory reporting were introduced. In some cases State bodies differed from the consensus view of the national professional organisation.

Another issue is who should be the recipient of notifications. Many professionals have expressed reservations about an obligation to report to police. Still a further issue is the question of recording of suspected cases of maltreatment. Because of the pattern of moving from one medical practitioner or hospital to another, to avoid suspicion, mentioned by Mr. Austin, the issue arises as to whether some central collection of confidential records of suspected child abuse cases should not be kept. The need, if such a record were established, to assure the confidentiality and security of such information requires little argument.

The provision of a holding order for children generally in need of care has been mentioned in numerous reports. One idea urged on the Australian Law Reform Commission was the facility for voluntary placement of a child in an institution, for a short time, to alleviate family tensions and to ensure that hurt to the child is avoided or lessened.

Provision for such a facility on a 'no questions asked' basis is a matter we have carefully considered. Other matters considered include the decision to prosecute parents, parallel hearings of such prosecutions and the care proceedings, the problem of institutional abuse and the power of educational authorities to administer corporal punishment to children. Most of you will be aware of the recent report in New South Wales recommending the phasing out of the cane in State schools in that State.

CONCLUSIONS

I am conscious that this little talk, with the somewhat pretentious title of a 'Keynote Address' will disappoint some. I have always felt that the strength of the lawyer's art lies in the ability to resolve problems and make decisions. The resolution may be insensitive and the decision wrong, but at least there is an end, for a time, to argument. I am aware that in this talk I have traversed the field in a general way and offered you no firm end conclusions. I do this because of the statutory and consitutional principle that the conclusions of the Law Reform Commission should first be offered to the Attorney-General and the Federal Parliament. Our report, which will be a major piece, will be available to all interested befor the end of the year. The report was produced after the closest consultation and co-operation with colleagues in all of the States. I should like to pay a special tribute to the Queensland Administration and the Director of Childrens Services, Mr. Plummer, for the assistance we received in this State. For all the talk about Federal/State tensions in some quarters, I can only say that we in the Law Reform Commission have had nothing but hearty co-operation and assistance from our colleagues and not least in this project.

One of the advantages of a federation, particularly one with scattered communities of roughly similar population as Australia enjoys, is our ability to experiment. In adjoining jurisdictions, we can try, on a basically homogenous population, differing legal provisions so that we can assess the effectiveness or otherwise of our reforming endeavours.

If it is true that in the subject of child welfare law reform and in the particular topic of child abuse, we are 'never quite satisfied' it is because there are no easy solutions. Indeed, there are no permanent solutions that can be offered. We must simply continue to experiment with legislation that puts emphasis on help rather than punishment.

Nonetheless, a conference such as this can focus the national and indeed the international attention of policymakers and lawmakers upon this difficult and sensitive topic. I am sure that those who will consider the implementation of the proposals of the Law Reform Commission will want also to consider the deliberations of this conference. We are all edging towards the just social response to the problem of child abuse. I know that this conference will make a contribution to that social response. I hope that, when published, you will consider that the report of the Law Reform Commission does so too.

FOOTNOTES

1. Professor A.J. Khan, Address to the National Conference 'Towards an Australian Family Policy', mimeo, Sydney, 8-12 May 1980.

2. B. Austin, Minister for Health (Qld), Press Release, 10 July 1981. The main proposal contained in a Bill to amend the Health Act 1937 (Qld) (1981) is to clarify and strengthen the power to hold children suspected of being abused. It is proposed that the period which a child may be so held (96 hours) should run from the time the detention order is made, not from the time the child is 'presented at the hospital'.

3. Letter, Mr. B. Austin to the author, 10 August 1981.

4. J. Nixon and J. Pearn, 'Non-Accidental Immersion in the Bath : Another Extension to the Syndrome of Child Abuse and Neglect', in Child Abuse and Neglect, Vol. 1, 1977, 445.

5. id., 446.

6. Child Welfare Act 1939 (N.S.W.), s.148B; Community Welfare Act 1972 (S.A.), s.82d; Health Act. 1937 (Qld), s.76K; Child Protection Act 1974 (Tas.), s.8(2).

7. Community Welfare Act 1972 (S.A.), s.82d(2). In addition, it is proposed (A Bill for an Act to amend the Community Welfare Act 1972 (1981), cl. 91(2)) that any registered psychologist, any pharmaceutical chemist, any person employed in a kindergarten, and any social worker employed in a hospital, health centre or medical practice, be under a compulsory duty to notify suspected cases of child abuse.

8. The Child Protection Act 1974 (Tas.), s.8(2), provides for the introduction by statutory rule of compulsory reporting by persons following specified professions, callings or vocations. The provision was implemented by r.275 of the Statutory Rules 1975 (Tas.). Note that there has been no implementation by regulation of the provision in the Child Welfare Act 1939 (N.S.W.), s.148B(1), for the extension of compulsory reporting to 'prescribed persons', being persons who follow a prescribed profession (other than that of a solicitor or barrister), calling or vocation or who hold a prescribed office.

9. Minister for Community Welfare Services, Victoria, Press Release, 27 May 1980.

10. Child Welfare Act 1939 (N.S.W.), s.148B(2); Community Welfare Services Act 1978 (Vic.), s.31(3); Community Welfare Act 1972 (S.A.), s.82d(1); Child Protection Act 1974 (Tas.), s.8(1).

11. There are in Western Australia specialised support services for child abuse cases.

12. Child Welfare Act 1939 (N.S.W.), s.148B(3).

13. Community Welfare Act 1972 (S.A.), s.82d(1), 82e(1).

14. Health Act 1937 (Qld), s.76K(1).

15. Child Protection Act 1974 (Tas.), s.2(3), 8(1).

16. Community Welfare Services Act 1978 (Vic.), s.31(1).

17. Child Welfare Act 1939 (N.S.W.), s.148B(2), (3).

18. A voluntary support service, Prevention, had been operating since 1974.

19. Community Welfare Services Act 1978 (Vic.), s.31(3).

20. Community Welfare Act 1972 (S.A.), s.82d(1).

21. id., s.82d(4).

22. Child Protection Act 1974 (Tas.), s.8(1), (2).

23. Community Welfare Act 1972 (S.A.), s.82a(2), 82c; Child Protection Act 1974 (Tas.), s. 3A, 6.

24. Health Act 1937 (Qld), s.76K.

25. Child Welfare Act 1939 (N.S.W.), s.148C(1).

26. Community Welfare Act 1972 (S.A.), s.82f.

27. Health Act 1937 (Qld), s.76L.

28. Child Welfare Act 1947 (W.A.), s.29 (3a).

29. Child Protection Act 1974 (Tas.), s.9.

30. id., s.10.

31. Child Welfare Act (N.T.), s.72.

32. Senator Guilfoyle, Commonwealth Parliamentary Debates (Senate), 30 May 1979, 2309. At the 1979 annual meeting of the Council of Social Welfare Ministers of Australia, New Zealand and Papua New Guinea, Senator Guilfoyle in her capacity as Minister for Social Security agreed to move towards a common definition of child abuse to enable national assessment of the problem to be made (ibid). See also Royal Commission on Human Relationships, Final Report, Volume 4, Part V, The Family (1977), 162-3 (hereafter 'Royal Commission on Human Relationships').

33. Community Welfare Advisory Committee (S.A.), Report of the Enquiry into Non-Accidental Physical Injury to Children in South Australia (1976), 16.

34. Royal Commission on Human Relationships, 163.

35. ibid.

36. Community Welfare Advisory Committee, 16.

37. 1976, 13; 1977, 13; 1978, 11; 1979, 27.

38. In an article in the Canberra Times (30 October 1980), 3 Dr M. Maloney, a member of a panel on child sexual abuse in the A.C.T., is reported as saying that 'it was impossible to obtain figures on [child sexual] abuse, but some estimates placed it at one in three Australian women having suffered such interference before they reached the age of 21'.

39. U.S. Congress Senate Committee on Labour and Public Welfare, Subcommittee on Children and Youth, American Families: Trends and Pressures (1974).

40. Cf. the protection afforded by the Child Welfare Act 1939 (N.S.W.), s.148B (6).

41. 'It seems to be generally accepted that legislative protection is needed for persons who report cases of neglect, including abuse, if they have acted in good faith ... The need for such a provision is as great in the A.C.T. as elsewhere.' Department of the Capital Territory, Submission to the Law Reform Commission, 61.

42. Juvenile Justice Standards Project, Standards Relating to Abuse and Neglect (1977), 68.

43. For comment upon the need for a power to hold the child, see Report of the Child Maltreatment Workshop (1976), para 6.15 -- 6.26.

44. The experience of N.S.W. and the States of Florida and Iowa in the U.S.A. suggests that comprehensive compulsory reporting provisions increase the number of cases brought to official notice. Compulsory reporting was introduced in N.S.W. by the Child Welfare (Amendment) Act 1977, on 30 June of that year. In the next year, 887 new cases were notified to the Department of Youth and Community Services. This compared with an average of about 64 cases per annum in the ten years prior to 1977. (Source: Department of Youth and Community Services (N.S.W.), Annual Report 1977-8, 28.) In Florida, a centralised system of notification was set up in 1971. Within three years, over 90,000 complaints had been notified (Source: Schuchter, Prescriptive Package — Child Abuse Intervention (1976), 9, cited in Boss, On the Side of the Child (1980), 102). In Iowa, the response to the introduction of compulsory reporting legislation in that State has been analysed. The analysis concluded that 'it appears that the legislative goal of encouraging reporting of all cases of suspected abuse has been achieved to a large extent' ('Iowa Professionals and the Child Abuse Reporting Statute -- A Case of Success', 65 Iowa LR, 1273, 1342 (1980)).

45. In N.S.W. there was a dramatic increase in reported cases after the implementation of the mandatory reporting legislation, but this was accompanied by a sudden decrease during publicity surrounding a conference which advocated strong police action against abusive parents (Source: Lightfoot, 'Specialist Units in the Identification and Management of Child Abuse — A Social Policy Approach', in Scutt (ed.), Violence in the Family (1980), 157, 167.)

46. The Commission is presently examining the subject of the confidentiality of doctors' records in its reference on privacy. See Australian Law Reform Commission, Privacy and Personal Information (ALRC DP 14, 1980).

47. The ethical rule was formulated in the 4th century B.C. by Hippocrates. It stated: 'I swear ... whatever, in connexion with my professional practice, or not in connexion with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge ...'. See Hippocratic Works, (1939), tr. by Francis Adams, 779—80.

48. Furniss v. Fitchett [1958] NZLR 396, 400—1. See also Bates, 'Medical Confidentiality and Privacy', (1978) 3 Legal Service Bulletin 189, 191.

49. Australian Medical Association, Code of Ethics (1975 ed.), cl.6.2.1—6.2.8.

50. Capital Territory Health Commission, Submission to the Law Reform Commission, 1.

51. Statement of Dr. E. Stack during consultation by the Chairman of the Commission with the National Women's Advisory Council.

52. See Gobbo, Byrne and Heydon (eds.), Cross on Evidence (2nd Aust ed., 1979), 198—9.

53. Dr. W.R. Atkinson, Oral submission, Public Hearing, 5 May 1980, Transcript, 56. Cf. 'Iowa Professionals and the Child Abuse Reporting Statute — A Case of Success'.

54. Capital Territory Health Commission, Submission to the Law Reform Commission, 1.

55. Green Paper, 37.

56. National Women's Advisory Council, Submission to the Law Reform Commission, 1.