A Voice for Children

The Office of the Commissioner
for Children in New Zealand 1984–2003

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Contents

Abbreviations

BSA	Broadcasting Standards Authority
DSW	Department of Social Welfare
CYF	Department of Child Youth and Family Services
FGC	Family Group Conference
The Act	Children Young Persons and Their Families Act 1989
MSW	Minister of Social Welfare
NZPD	New Zealand Parliamentary Debates
SES	Special Education Service
The Office	Office of the Commissioner for Children
The Minister	Ministers of Social Welfare and Social Services and Employment
NZCYPS	New Zealand Children and Young Persons Service
NZCYFS	New Zealand Children Young People and Their Families Service
NZCYFA	New Zealand Children Young Persons and Their Families Agency
NZPD	New Zealand Parliamentary Debate
OCC	Office of the Commissioner for Children
UNCROC	United Nations Convention on the Rights of the Child

Acknowledgements

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One of the pleasures of writing this history was meeting a wide range of people connected with the rights and welfare of New Zealand children and young people.

The Commissioner for Children at the time, Roger McClay, and all his staff made me particularly welcome during the months I spent researching and writing the study, and provided a huge amount of valuable information and advice.

They and the other people who were willing to be interviewed, to answer questions or to read drafts included John Brickell, Bobby Bryan, Pauline Coupland, Michael Cullen, Rod Davis, Mike Doolan, Trish Grant, Ian Hassall, Mary Lynch, Gabrielle Maxwell, Roger McClay, Gordon McFadyen, Karen McKechnie, Joanna Ludbrook, Ngaire Sheppard, Jenny Shipley and Beth Wood.

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John Barrington

Foreword

In 1989 Judy Keall, speaking to the second reading of the Children, Young Persons and Their Families Bill, spoke about the new Office of the Commissioner for Children. She said this would be "an independent voice for children who will speak (out) about their welfare and their interests".

In the same debate the Right Honourable Michael Cullen said of the Office, "The functions … include investigating decisions made or actions taken under the legislation and monitoring policy and practices relating to the exercise of powers under the Act. I think it will be a widely welcome breakthrough …"

And so it has transpired.

The new Office was intended to provide a voice for children and was given functions and powers which were very broadly defined, leaving it to each Commissioner to establish his or her own priorities having regard to the issues of the day affecting the lives and well-being of the children in this country. In spite of the frustrations and limitations both of the function and resources, the Office has been, in my view, an unqualified success.

It has been a success firstly because three outstanding New Zealanders have held the Office, bringing widely divergent backgrounds to the tasks of a Commissioner – "medical, legal, educational and political" – but all bringing a similar passion to confront the individual and systemic difficulties encountered by children in this country over these years.

Each Commissioner has brought to the Office his own strengths and his own sense of priorities and obviously these have differed over these short few years. What has not differed has been the measure of support by dedicated and professional staff supporting Commissioners, who have not hesitated to speak out publicly on issues affecting children.

The Office may have been created as a slightly reactive and protective device to balance the introduction of a unique family/whanau-based decision-making model introducing "new ways of working" into the care and protection of children and to youth justice generally but it has developed well beyond that original tentative concept.

This book is a record of those first years and of the first three holders of this Office. In my view it is vital that such a record be kept. The information and comment in this book will always suffer because it is recent and cannot be seen through the

wider lens of history. It is therefore in a context which is raw with patterns which are only dimly observed.

It is, however, only by seeing where we have come from that we can also see where we should be going. It is important that the way in which this Office came into existence and the way it has been shaped by the first three Commissioners be held in a readily accessible way so that all can see what progress has been made and what issues yet need to be properly faced in the interests of our children.

From my limited perspective, having had the benefit of association with all three Commissioners and with their dedicated and professional staff, it seems to me of crucial importance that this record be kept not only for now but be maintained for the future.

The independent voice of the Commissioner for Children speaking strongly when necessary about current problems and difficulties, about government agencies strengths and weaknesses, about gaps and lack of focus in education, welfare and other agencies, is of crucial importance in maintaining an honest view about the well-being of our children and therefore our future.

I congratulate those who had the idea that such a record would be of value and I congratulate Dr John Barrington for his research and the energy which has produced the result.

The only sadness which needs also to be recorded is that the first and most obvious person to be approached for such a Foreword was unable to write it. Judge Mick Brown, a pioneer of new ways of working with children, young people and their families in this country, was unable to take on further tasks at a time when his beloved wife was seriously ill. He has asked, however, that he be associated with this Foreword and this tribute to the three past office holders and the author of this volume.

D J Carruthers
Chief District Court Judge
7 July 2003.

CHAPTER

1

Formative Influences

The way a society treats its children reflects not only its qualities of compassion and protective caring, but also its sense of justice, its commitment to the future and its urge to enhance the human condition for coming generations.

United Nations Secretary General Javier Perez de Cuellar during the drafting of the United Nations Convention on the Rights of the Child (UNCROC).

A Commissioner for Children

The Office of the New Zealand Commissioner for Children was established as a statutory advocate for children in the Children Young Persons and Their Families Act 1989, reflecting changing approaches to child protection and growing interest, during the 1970s and 1980s, in an individual or agency to act as an advocate for children.

The earlier Children and Young Persons Act 1974 had a strong emphasis on child protection. Fundamental to it was the 'paramountcy principle', which held that 'the best interests of the child' should be the first and main consideration when decisions about a child's safety or well-being were involved.

The philosophy of the law gave rise to the creation, in each Department of Child, Youth and Family office, of child protection teams. These were made up of social workers, police and a strong legal and medical presence, and were usually led by a paediatrician. They took a very technical, conservative approach to child protection, erring on the side of caution and commonly recommending that children be removed from what were seen as dysfunctional families when difficulties arose. Gordon McFadyen of the Office described this to me as a 'child rescue' model of social work intervention.

> This approach impacted particularly on Maori. Professional activity led to many Maori homes being assessed as incapable of providing the nurture and the

> conditions for social and emotional growth needed for children to develop as good citizens. The result was the removal of many Maori children from whanau, hapu and iwi. Children sent to institutions were frequently doubly disadvantaged, becoming attached in some environments to a criminal underworld. Tags like 'university of crime' stuck, and behaviours learnt often impeded satisfactory settlement back into the community (Interview, 2002).

Looking back at this period the Report of a 1992 Ministerial Review of the implementation of the Children, Young Persons and their Families Act (commonly known as the Mason Report) suggested:

> In simple terms the interests and welfare of the child or young person took priority over the interests and welfare of the family …. The prevailing attitude was one of '… we in the Department of Social Welfare know best how to look after your child – leave it to us!' Consequently many children were placed in long-term foster care or became 'lost' in institutional care. It was by no means uncommon for several children in the one family to be dealt with in this way and it was hardly surprising that the Department came to be regarded in some quarters as '… those people who take our kids away from us!'. Maori and Polynesian families in particular felt deeply hurt by these practices, especially when decisions relating to the child and whanau were being made by non-Maori or Polynesian social workers who had little understanding of the cultural or social implications of their attitudes and decisions.

The Report acknowledged that while social workers of the era did their very best to provide a quality service, it was one which reflected the prevailing attitudes of the time. One result was that in the 1980s many thousands of children were in the care of the state, with about 10 per cent in residential care and the great majority in foster care. This was supported with board payments, clothing allowances and pocket money. Foster care teams to train foster care parents were located in each welfare office.

Widespread reservations about existing policy led to growing pressure to return more young people to their families. Greater awareness of the well-being of families, and the importance of family and community responsibility for children's welfare, developed, as did understanding that families were significant social systems embracing any number of households. This began to influence social work practice, including approaches to child protection. There was a growing realisation that adhering too rigidly to the 'best interests of the child' approach could impact negatively on families, and that placing children outside their families, although sometimes necessary, could have harmful consequences. Therefore child protection needed to be balanced in the overall best interests of the child.

Mike Doolan, then chief social worker in the Department of Social Welfare, pointed out that it was known that children sought return to their families of origin when they were discharged from care. But often major alienation had occurred. The notion that children might be better protected in the long run by preserving their

familial, cultural and community ties and by strengthening their families, gained currency during the 1980s (Interview, 2002).

The need for greater cultural sensitivity towards Maori and consultation with them also began to influence the Department of Social Welfare (DSW). A Maori cultural renaissance, associated with the Treaty of Waitangi, accelerated Maori involvement in land development, education, health and welfare matters. Allegations of inhumane punishment of young people in Auckland social welfare homes emerged from an inquiry by the Auckland Committee on Racism and Discrimination, Nga Tamatoa and Arohanui Inc. in June 1978. Considerable public scrutiny of the Department's residences resulted, including an investigation by the newly created Human Rights Commission in September 1982.[1]

The Minister at the time, Anne Hercus, established a Ministerial Advisory Committee in 1985 chaired by the late John Rangihau to report on the most appropriate means to 'meet the needs of Maori in policy, planning and service delivery in the DSW'. The Committee held 65 meetings on marae and in Department offices and institutions around the country and produced a report, *Puao-te-Ata-Tu*, in 1985.

The Hon. Steve Maharey described this report as a 'landmark event – one that still continues to provide guidance to social policy and the delivery of social services' (Maharey, 2001). It was hugely influential in decisions subsequently made about the child welfare legislation, having a profound impact on the principles and objectives of what was to become the Children, Young Persons and Their Families Act 1989. Bobby Bryan, a social worker before becoming an advocate in the Commissioner's Office, has written that 'even after 15 years, it [*Puao-te-Ata-Tu*] still sits in my briefcase, as it does in many other briefcases around the country. The copy I have would surprise you. It isn't old, tattered or well used. In fact it is brand new. The reason for this is that I am always giving my copy away' (Bryan, 2001).

Gradually these developments became encapsulated in a philosophy of 'family solutions to family problems', with greater acceptance that there could be advantages in leaving a child within the family and whanau, and in giving families greater say in finding solutions when care and protection matters arose. Doolan recalls that 'the role of the professional would change to one of supporting this process and ensuring families had quality information and the resources required to implement any decision, plan or recommendation they might make'.

Parallel to these developments was a growing interest in children's rights and welfare, and the 1989 legislation drew attention to the need for an Ombudsman type of role to safeguard these. Support for a Bill of Rights for Children had begun to develop during the late 1960s, and children's rights were mentioned in the New Zealand Handbook of Civil Liberties (1973). Advocacy of children's rights was a factor in the Department's residential homes becoming the focus of considerable attention from the late 1970s. By 1979, the International Year of the Child, the idea of an agency or person to act as an advocate or 'voice for children' was increasingly heard, with support coming from influential organisations such as the National Council of Women. Various names were proposed, including 'Children's Guardian',

'Children's Ombudsman' and 'Commissioner for Children' (Ludbrook Interview 2002). In 1982, the New Zealand Committee for Children's report to the Government advocated a similar concept, and a need for such a role was also identified in DSW policy papers reviewing child welfare legislation during the 1980s.

The 1989 Children and Young Persons Bill

A Children and Young Persons Bill was first introduced by Ann Hercus in December 1986. However, criticism of aspects of it during the Select Committee stage led a new Minister, Dr Michael Cullen, to establish an official working party after the 1987 election to reassess it. Further submissions were called for, and Committee members travelled throughout the country to receive comment, particularly from Maori and Pacific Island people.

Amongst noteworthy innovations in the revised Bill was the Family Group Conference (FGC). Where a social worker believed that a care or protection matter existed, they would now be required to refer it for a FGC. The extended family would be brought together to consider the social worker's assessment that a child or young person was in need of care and protection, and would be legally empowered to make decisions, plans or recommendations, depending on the circumstances of the referral. Social workers, police and others who had had contact with the child would also attend. Their power to make decisions or take court action would, however, be restricted to situations where a child was believed to be in immediate danger or families were unable to agree, or when decisions, plans or recommendations contrary to the objects and principles of the Act were proposed. The outcome would, ideally, be one which the family considered to be meaningful and which met the aims of the Act. The FGC could make plans requiring the Department to provide financial and/or social work support to the family to support the placement of the child. Moreover, it provided a new way of dealing with young offenders, with a focus on whether an alternative to prosecution was possible.

Reporting the revised Bill back to the House from the Social Services Committee on 20 April 1989, the Chairperson (Judy Keall) claimed it would protect families from 'over-zealous professional intervention, and give them a chance to solve problems themselves' (New Zealand Parliamentary Debate: 20 April, 1989).

Moving the second reading, Dr Cullen commented that 'the Bill incorporates the most far-reaching changes to our children and young persons legislation since the Child Welfare Act of 1925'(NZPD: 27 April, 1989). It recognised that 'the well-being of children and young persons is bound in with the well-being of their families'. For this reason, the word "families" had now been included in the title. The Bill placed

> … greater emphasis on the interests and authority of families. It reduces the power of the State and of professionals to make decisions for children and young people irrespective of their families …. We are convinced that, given

> the resources, information and authority, a family group will, in general, make safe and appropriate decisions for children. That will not always be so, but the family group should always have the first chance to do so. By family group I do not mean just nuclear family. I also include an extended family group …. At the same time, the Bill safeguards the rights of children … when there is a conflict of principle or interest, the welfare and interests of the child or young person will be the deciding factor.

Several Opposition members spoke strongly against aspects of the Bill on the grounds that it went too far in favouring families as opposed to protecting children. Jim Gerard argued that 'it altered the principle of dealing with abuse' by ' putting it in the hands of the family or extended family to settle. Those who have offended will now have a direct say in the solution … worse still, the Bill cuts out the crucially important independent experts … from the conference that determines the outcome.' Venn Young, the member for Waitotara claimed that the Bill 'no longer gives the child paramount protection under New Zealand law'(ibid.).

Opposition MPs were not alone in their reservations. Dr Ian Hassall, Deputy Medical Director of Plunket at the time, was concerned that giving families responsibility for decision-making, even though decisions had to be approved by a social worker, caused (and still causes) apprehension among some people considering themselves to be acting in children's interests. The reason he gave was

> … fear that the family, being abusive, would not act in the child's best interests, and would subject the social worker to 'capture' through weight of numbers, cultural relativism etc. There is also the concern that the FGC would not have sufficient expertise at its disposal by comparison with the multi-disciplinary team of experts which was the decision-making body in earlier Bills (Interview 2002).

At the Select Committee stage, members of the National Advisory Committee on the Prevention of Child Abuse and Neglect (NACPCAN) expressed views along similar lines. The Committee had been established in 1980 by the Minister of Health, George Gair, and its main task became the development of the new child protection legislation. Dr David Geddes, Director of Plunket, was typical of NACPAN members in wanting greater recognition that giving some dysfunctional families more responsibility could put children at risk. Mike Doolan recalls that a 'professional, medical, legal lobby who were displeased with the Bill's greater emphasis on families advocated continuously that children would not be safe under the Bill, which they claimed stripped away professional powers'. However, Dr Cullen was equally adamant in defending the Bill. He suggested that the earlier Bill had 'tipped too far in the direction of professional control and did not involve the family sufficiently to ensure proper consultation …. I am prepared to cite case after case, if pushed, in which professional control has not worked'(NZPD: 20 April, 1989).

Hassall subsequently described the new focus the Bill represented as

> … unusual in a number of ways when compared with child protection law in other countries. One fundamental feature was that it rejected a view of child protection as a technical matter requiring primarily the intervention of experts. Instead it saw the protection of children primarily as a social responsibility to be realised through reform of families and communities. In this it was far-sighted, I believe, and ahead of the international orthodoxy of the last four decades (Hassall, 1999).

A Commissioner for Children and the 1989 Act

In 1989 Hassall, in addition to his role with Plunket, was the Medical Association's nominee on NACPCAN. He recalls: 'I came to believe there was a need for an official child advocacy role during the latter stages of the evolution of the 1989 Act. On 20 February 1989 I made a submission to the Government describing how this might be established.' The principal models he had examined were the South Australian Children's Interest Bureau, established in 1983 and headed by Sally Castell-McGregor, and the Norwegian Children's Ombudsman's Office, set up in 1981 with Malfrid Flekkoy as Ombudsman. He later acknowledged that he owed a 'great deal' to both women in the development of his own thinking about the role a Commissioner for Children could play.

Hassall's submission was indeed made at a late stage, with the Bill being reported back from the Select Committee on 20 April, and today he is quick to modestly disclaim any particular influence on it. His submission was in two parts. In *A Children's Ministry for New Zealand – An Office for Children Responsible to the Minister* (1989) he pointed out that many countries or states (he identified seven) had already established an agency to represent the interests of children. He suggested that 'children in New Zealand are at least as disadvantaged through their relative powerlesness as are women, Maori and consumers, who already have Ministries of State to pursue their interests'. Moreover, children were at the added disadvantage of having no vote, and therefore no direct representation in the democratic process. The submission then outlined the range of activities and some of the accomplishments of agencies for children overseas. It suggested that a Human Rights Commissioner for Children in New Zealand role would be too limited, and identified further reasons for the immediate establishment of a body to represent children's interests.

In *An Office for Children – A Solution to the Child Protection Dilemma* (1989) he pointed out that the Bill's 'presumption in favour of the family … is seen by many in law, medicine, social work, and in the community, as a retrograde step and will be the subject of controversy'. However, he acknowledged this emphasis was also 'supported by deep feeling that a presumption in favour of the child in law and practice will disadvantage families', and that a co-operative approach had developed in recent years 'among professional and community groups, and individuals concerned with a particular family …. These people share information and decision-making among themselves and with the family.'

The establishment of an Office for Children, responsible to the Minister of Social Welfare, would resolve these matters 'in a way which is acceptable to most, effective, and affordable'. The Office would represent the interests of children in child protection proceedings, co-operate with District Offices in child protection, and make contact with representatives of the many groups interested in children's well-being. It would provide a balance between the principle of the paramountcy of the child in child protection proceedings, as expressed in the 1974 Act, and the 'not unreasonable' emphasis in the new Act on a responsibility for all family members.

An Office of Commissioner for Children was added to the Bill at a very late stage, 'literally at the last minute', according to Mike Doolan. He suggests it was a

> … compromise measure resulting from a wish to meet some of the concerns which had been expressed, particularly the concern of some professionals that the Act had gone too far in the direction of giving responsibility to families without adequate safeguards for the welfare of the child. It was the Department's way of saying to the Labour Government. 'There are some concerns. We'll put this Office in to meet those.' It was a trade-off, a last-minute effort to avoid a big problem. Professional people probably felt they had a right to be reassured about their concerns and this was a way of meeting those.

Laurie O'Reilly, a family court lawyer at the time and the Law Society's nominee on NACPCAN, suggested that 'the Government seized upon the concept of a Commissioner for Children as the solution' against a background of criticism and adverse reaction to the Bill (1997). Hassall later described its introduction as one of the 'safeguards of the interests of various parties … the position was conceived primarily as a check on the possibility that the interests of a child, a group of children or children as a class might be overlooked or thwarted in the operation of a child protection and youth justice law which had moved in the direction of family-based methods' (Hassall, 1995).

The functions of the Office were not prioritised, one description of the role of the Commissioner and Office being that it was 'deliberately broad, without clear guidelines or standards for the exercise of the Office's statutory responsibilities' (Trapski, 1991). Mike Doolan makes the interesting point that the term "Ombudsman for Children" was not adopted (as it had been for the World's first equivalent office in Norway in 1981) because of its 'compliance orientation'.The Office of the New Zealand Commissioner was envisaged, by contrast, as 'much wider in its functions than just compliance, with a role in both research and policy related to the well-being of children'.

The functions of the Commissioner set out in the Act were to:

- Investigate any decision or recommendation made with regard to the CYPF Act.
- Monitor and assess the policies and practices of the Department and encourage

polices and services within it which promoted the welfare of children and young persons.
- Undertake and promote research.
- Receive and invite representations from the public on any matter.
- Increase public awareness.
- Advise the Minister on any matter relating to the administration of the Act.

Some other specific statutory and official responsibilities either in the Act itself or added later included:

Care and Protection Resource Panels

When social workers were notified of or suspected child abuse they were required to investigate after consulting with a local care and protection resource panel. These were community advisory groups created by the Act as another check and balance or accountability mechanism. Panel members would be nominated by the DSW from lists compiled by professional and community groups, and were intended to include lay as well as professional members and members from different ethnic groups. Monitoring and encouraging the effective operation of the panels came within the Commissioner's duties under the Act.

Reports

When the Department executes a Place of Safety Warrant (Sections 39, 40 or 42 of the CYPF Act 1989), removing a child from their parents or caregivers and, on investigation, returns the child before taking the matter to Court, a report must be furnished by either a Social Worker or the Police to the Commissioner for Children. This must outline:

- the grounds on which the warrant was issued and the reasons why the child was so placed
- where and with whom the child was placed
- whether a medical examination was carried out and the findings of that
- reasons for release from custody
- details of any further actions.

Children and Young Persons (Residential Care) Regulations 1996

This gave the Commissioner and staff the right to visit children and young people in residential care, be consulted regarding appointments to grievance panels for residents, consider reports from the panels and complaints from children dissatisfied with grievance panel reviews.

Death Reviews and Critical Incident Reviews

This would become a non-statutory function resulting from a formal protocol between the Commissioner and the Department of Child Youth and Family (CYF) Service. The Commissioner would consider and report on internal reviews carried out by the Department when a child or young person died while in the guardianship, custody or care of the Department or where there had been a critical incident.

Note:

[1] For a detailed history of child welfare in New Zealand see Dalley, 1998.

CHAPTER

2

The First Commissioner – Dr Ian Hassall, 1989–1994

Dr Ian Hassall was appointed as the first commissioner in July 1989. A paediatrician, he had been at the forefront of cot death research and an advocate of the compulsory fencing of private swimming pools. His responsibilities for Plunket included the South Auckland Child Health Project, aimed at developing comprehensive child health-care in South Auckland under a special government contract.

The need to replace the 1974 Children and Young Persons Act had become clear because of rapid developments in the child protection field, and Hassall acknowledges he was 'involved in the clamour and the development of the new law in a number of capacities'. These included membership of NACPAN and the Child Abuse Prevention Society (Parent Help), set up in 1977 by a group of paediatricians, social workers, nurses and others. In the mid 1980s, he was involved in the establishment of the South Auckland, and subsequently the Otara and Mangere, Child Protection Teams (CPTs) dealing with abused and neglected children. This included chairing the Mangere CPT, which 'made submissions on various of the metamorphoses of the Child Protection Bills'.

Mike Doolan suggests that Hassall's appointment as Commissioner was reassuring to those medical and legal professionals concerned that the 1989 Act had gone too far in the direction of family responsibility without sufficient professional input. Whereas previously they had felt ignored, the new Commissioner could be regarded as 'one of them'.

Getting Started

Hassall recalls that the Office's first home was 'a temporary perch in the Ministry of Forestry building', found for him by a 'friendly retired former senior public servant'.

A more permanent home was found at 39 Pipitea Street, Wellington. It was a small, old, grey-blue house, between the Fijian Embassy and the Ministry of Pacific Island Affairs. The contrast with the national office of NZCYPS, located in the six-storey West Block of the Charles Fergusson Building in Bowen Street, was considerable.

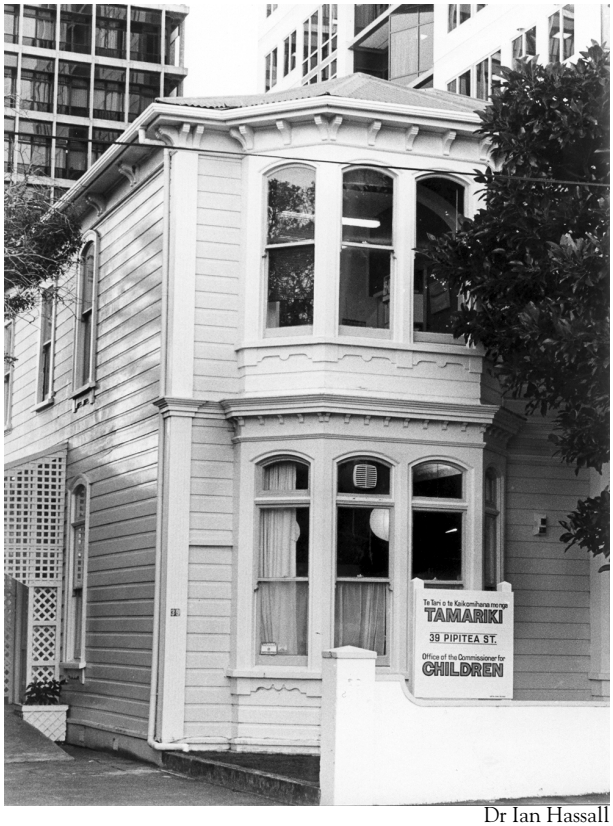
Efforts were made to make the building child and parent friendly; more like a house and less like an office. A colourful mural provided by the children of Wellington's Lyall Bay School and a boat sponsored by J. Wattie Foods made a welcoming environment for local school children and many visitors from within New Zealand and abroad.

Aware that the position of children in New Zealand was not well known, Hassall viewed a rigorous research-based approach as essential for providing a solid basis for advocacy work and establishing confidence in the Office. Monitoring the operation of the Act would also require a strong research emphasis. An Office Newsletter *Children*, was published, initially quarterly, and soon achieved a wide circulation.

Staff with different skills were immediately required. A senior researcher, Dr Gabrielle Maxwell, was appointed in February 1990. Jeremy Robertson, who had worked in the justice and medical fields, followed in September 1990. To help investigate complaints, respond to enquiries, examine issues and undertake projects, Lyn Eden was appointed in October 1990 as a community relations officer. She had previously worked in the New Zealand Police's school programme. When she left on maternity leave in February 1992, Beth Wood, who had extensive knowledge of care and protection issues and had worked as a counsellor at the Wellington Child and Family Service, was appointed. Short-term contracts were also used. In February a professional librarian, Jenny Studd, was appointed to bring together specialist collections and create one central library to support the work of the Office. It was also to become well used by university students undertaking research projects. An office manager, Francis Grattan, joined and when she left, Lima Paget who had worked for a community newspaper, replaced her. Pauline Coupland began part-time to assist with clerical and administration tasks, and hers was to become a lengthy stay. Andrea Jamison, a lawyer with a particular interest in developing her knowledge in the law relating to children, was appointed in 1994.

The annual government grant for the Office's operation was around $500,000, and approximately $100,000 of this was carried forward each year during Hassall's term. When I asked him about this, he commented that the 'ups and downs' of calls on the budget during the Office's establishment phase, combined with the 'strictness of the time in not tolerating over-spending', meant he felt he needed to maintain a contingency fund. Substantial funding was also going to be required for research into the effectiveness of the Act.

Links with other organisations were regarded as important as the Office got underway. As one example, Hassall recalled meetings he had with the staff of IHC to improve his understanding of the separation of advocacy and service provision roles, which had 'became an issue for many not-for-profit organisations in the contractarian era'.



Dr Ian Hassall

The first Office of the Commissioner for Children, 3a Pipitea Street Thorndon.

In a paper given to an Australian conference in 1992 on implementing UNCROC Hassall, outlined three principles he viewed as guiding the work of the Office:

- The humanity of children. Children are human beings whose rights must be respected and upheld with no less vigour than is accorded others. They are not lesser beings, or merely potential adults or defective adults, but people in their own right, sharing some needs with all of humanity and having certain particular needs.
- The individuality of children. Each child is a personality with a set of attributes and a means of expression and interaction with others that identifies him or her. Relationships with children must be based on this fact rather than on a stereotype.
- Diversity in child-rearing practices. There are many variations in child-rearing practices. None should be condemned unless there is acceptable evidence or a reasonable expectation that they will cause harm (Hassall, 1992).

Monitoring and Reviewing the 1989 Act

Complaints

The Act entitled the Commissioner to investigate complaints directed towards the Commission, but with limited staff and resources a relatively small amount of time was initially spent responding to these. Addressing an Australian audience in 1991 Hassall suggested that:

> At one extreme the office cannot afford to be swamped by becoming an advice line, open to all comers, but nor can it afford to lose touch with the concerns of children and their families (Hassall, in Alston and Brennan, 1991).

He used the example of the Norwegian Ombudsman's Office opting to make a large part of its activity complaints oriented, but viewed more favourably the idea of such offices ensuring complaints procedures existed without operating them directly themselves.

However, as the complaints function became better known, complaints 'began to pour into the Office', according to Beth Wood. In the year to June 1992, complaints were received relating to the Act (29%); education (29%), health (10%), police (6%), custody and access (5%) and a miscellaneous group mainly relating to the provision of services.

There were also complaints about the Department and, from May 1992, the newly formed New Zealand Children and Young Persons Service (CYPS). These included grievances about the Department's management of cases, failure to comply with the Act, lack of services available to provide it with resources and disagreements regarding its interpretation. Concerns relating to custody and access were regularly received, with complainants believing they had been treated unfairly, the best interests of children had not been served,or a Family Court decision had been unfair. In the following year the Commissioner received 147 complaints in total, almost a 50% increase on the previous year. Of these, 40% fell into categories related to the Act and its implementation, compared to 29% a year earlier.

Both Hassall and the Community Relations Officer responded to and investigated complaints and also reviewed each other's work.

Hassall recalls that

> … in monitoring the activities of CYPS I found not infrequently that they were at odds with the spirit and letter of the Act, particularly in certain areas such as substituting non-statutory family/whānau meetings for statutorily defined family group conferences, or adhering to a doctrine of minimum intervention without regard to the other principles of the Act.

Inquiries, Complaints and Investigations

'The Office's role was and is, as far as I am concerned, primarily one of advocacy, with the monitoring and adjudicating roles subsidiary.' That the Minister and Parliament saw it that way is suggested by the record in *Hansard*, e.g. 20 April 1989. However, this reflection by Hassall, looking back from a 2002 perspective, is interesting because it touches on the absence of prioritising the functions of the Office and the Commissioner in the Act, which appears to have existed throughout the Office's history and created some tension at times. The small staff often restricted the ability to conduct investigations unless all other avenues had been explored. Nevertheless, there were some notable exceptions which demonstrated how a single detailed investigation could identify matters with a wider application. Gabrielle Maxwell's view (with which Hassall agrees) is that Hassall adopted the deliberate stategy of identifying an individual case for detailed investigation, particularly where there was potential for it to become an exemplary one (Interview, 2002). The following examples illustrate this approach.

Children and Young People's Rights

Police Swoops in Auckland

> It was alleged that 30 to 40 mainly Maori or Polynesian young people, most of whom were on their way to the movies with their parents' permission, were rounded up in a police swoop. They were taken to the Town Hall, lined up against a wall, photographed and then held by the police for several hours, in some cases without their parents being informed.

Hassall issued a press release on 16 September 1990 advising that he would be inquiring into the incident on the grounds that it 'apparently involved a serious misuse' of the Act, and subsequently carried out an investigation. He immediately received some critical correspondence for this stance. One solicitor wrote to him praising the police for 'rounding up some of the "street kids" in an attempt to clean up the problem'. Too often, when they did this, they were 'attacked by left-wingers, do-gooders, liberals, etc. of all descriptions.' If criticism was all the Commissioner could offer, the correspondent suggested, he should resign. The charge of being a 'do-gooder' was one successive commissioners were going to have to live with!

Justice Tomkins declined to grant an order to prevent another police swoop, but he did caution the police against exceeding their powers, saying that certain aspects

of the operation appeared to have contravened the Act, and referred the police to their own manual on how to administer it. He also drew attention to Section 48 of the Act, whereby:

> … the Police can act only where the individual member of the police has good reason to believe that an individual child or young person under scrutiny is in a situation of physical or mental impairment or is likely to be in terms of Section 48. *Only* in these circumstances may the Police act. The individual member of Police must be satisfied that the qualifying circumstances exist before taking the young person anywhere (Cited by S. Jefferson in correspondence with Hassall 24 September, 1990).

The criteria would not be met just by the presence of 14 or 15-year-olds in Queen Street on a Friday evening. Photographing them had been an 'unjustifiable invasion' of their human rights, and the Judge had 'grave reservations about them being collected up and taken to the Town Hall'.

Hassall points out that what he describes as the police 'kiddy-sweep' was never repeated, and identifies it as one of many cases where the Office contributed to changes in institutional practice.

However, this case highlighted one restriction on the Commissioner's powers which was to be a source of continuing frustration – an inability to be directly involved in court cases. For the High Court hearing on this occasion, Hassall hired Counsel to represent him on the grounds that he had a valid interest to be heard. The Judge expressed doubt that this was the case but ruled that it could be clarified later so offered no objection on that occasion.

The restriction was raised in the Office's submission to the 1991 Ministerial Review of the Act. This pointed out that in several cases over the previous two years it would have been helpful to have been involved and the authority was needed to commence or join any action, in any court, in any matter which might affect the life or well-being of a child or young person.

Young People's Rights and the Law – Further Examples

Publicity was given to thefts and burglaries committed by young people in Hastings, Wellington and Auckland in April 1990. Police complained that they were being hampered in dealing with such crimes by Section 215 of the Youth Justice Provisions of the Act which required that a child or young person be informed of their rights before questioning by police. These rights included the right to silence and other rights available to adults.

After an inquiry, Hassall concluded that in fulfilling its purpose of 'protecting vulnerable young people', the effect of the law was unclear (1990). But he also suggested its effect in hindering police apprehending offenders had 'very likely been considerably exaggerated' (ibid.). Modifying it might be justified as a 'means of restoring police and public confidence'. But this should not be done 'at the expense of denying to children and young people the due process of the law'. Recommendations included further training of those involved in administering the Act.

This issue arose again in a 1993 Bill to amend the Act, allowing police to delay informing young people of their rights until a later stage in their questioning (*Children* 1993). The police perception remained that they were encountering difficulties in questioning young people, because informing them of their right not to answer was being interpreted by some as an invitation not to co-operate. But Hassall disagreed. He described this as a view which 'retreats from the position that it should not be assumed that young people know their rights, and they should therefore be informed of them at the start of questioning'. While the proposal might not lead to an infringement of rights in practice, 'it remains to be seen and police practice should be kept under close scrutiny'.

Child Abuse

In 1993, 11-year-old Craig Manukau was beaten to death by his father. Hassall's review of the case and report to the MSW drew national attention (Hassall, 1993). He found that the family had been known to the DSW, but Craig's need for immediate protection was not given adequate priority. Hassall acknowledged the 'daunting task' of being a social worker and the range of skills needed. He found that the social worker involved had known her community well, had 'thoroughly and patiently' recruited support for Craig wherever she could, and was sympathetic to the family's circumstances.

But Hassell's review identified an inadequate child protection focus, and an unwillingness to 'upset the whānau and to intrude into their affairs to a degree that I believe was dangerous'. The social worker's knowledge of the fundamental principles of child protection child abuse and neglect was 'inadequate', leading to a failure to arrange vital investigations such as a medical examination. For Hassall, the case emphasised how social workers could fall into the trap of regarding family responsibility as an end in itself, and he recommended that decisions by a FGC should be measured by one person taking a child protection focus and asking, 'is the child safe *now*?'.

Hassall was highly critical of the Department's own review of the case, which he said had 'not identified the key issues', was 'unbalanced', and revealed a social worker without adequate knowledge and training in some vital areas. He recommended that 'NZCYPS undertake a programme of rediscovery at all levels of its purpose as a child protection agency'.

The report had a significant impact on social work practice and eventually

contributed to the Commissioner being notified of the circumstances of the death of every child known to the Service during the preceding 12 months. As a result, reviews by the Office of CYPS procedures when the Service investigated child deaths would become a significant part of its work.

Residential Care of Young People

The experience of young people in DSW residences was another area the Office periodically investigated. In 1992, Hassall received a complaint regarding a care and protection case at Weymouth, a residential facility for young offenders. A young person was being held long-term in secure care under special arrangements for the protection of others. An inquiry was conducted and recommendations made about the need to provide alternative suitable psychiatric facilities for disturbed young people.

Hassall subsequently advised the Ministers of Social Welfare, Health and Education that the Office regularly received reports from individuals and groups concerned that the special needs of disturbed and disruptive children and young people were not being adequately met. When schools could not cope, these young people were suspended or moved on. When it was families who could not cope, some children and young people ended up on the street. He reminded the MSW of the recommendation by the 1991 Ministerial Review, that the DSW revisit its 'last resort' policy relating to residential facilities. A need existed for special schools and organisations which provided special services for those children and young people whose behaviours could not be managed by existing facilities. Lack of care and treatment facilities for this group was a constant concern to both professionals and families, and was a major issue in many communities (*Children*, June 1993).

Concerns about aspects of residential care for young people were also identified by Gabrielle Maxwell and Andrea Jamison who worked with the Human Rights Commission to review residential placements within social welfare and elsewhere. In *Who Cares for Kids* (1994) they made submissions to the Department about necessary policy changes. Meetings with residential staff were held to promote positive policy initiatives. Concerns identified included the need for guidelines on punishment and physical restraints, protocols on staff training and monitoring, complaint procedures, and guidelines on disciplinary procedures for staff arising out of concern about the staff behaviour at Weymouth.

Other Functions Related to the Act

Care and Protection Resource Panels

Another outcome of the 1989 Act panels were, according to Beth Wood, sometimes viewed as successors to the pre-1989 child protection teams. The 'perceived

professional dominance, directiveness and intrusiveness' of these teams had annoyed some departmental social workers (Wood, 1992). However, the fundamental difference between the two bodies was that while the teams were panels of experts who were part of a decision-making process, the new panels were intended to be advisory only. Wood identified difficulties with the early functioning of some panels, including inadequate 'clarity of purpose and accountability'.

> Being 'owned' by a service (NZCYPS) which has in it individuals … who are not at all sure they want to use or own panels, has not made easy the task of their being valued, valuable and cohesive. The question of who is responsible for making this group work, the panels themselves, or the office they serve, is one of balance and attitude not yet resolved in many places. For many years panels around the country undoubtedly varied considerably in terms of training, resources, systems and general effectiveness.

The huge increase in notifications of child abuse after the 1989 Act undoubtedly put pressure on some panels and also on overworked social workers who sometimes found it difficult to consult properly with a panel. Beth Wood recalls that Hassall recognised their importance and 'championed their effective operation' as 'crucial to the functioning of the Act'. Communication with panels was regarded as a priority, with fifty-two panel members writing to Hassall expressing various concerns during the 1992/3 year alone.

Beth Wood also played an important role. She encouraged and even 'drove' the Service, according to one observer, to adequately resource the panels, and worked closely with them once they were established. In 1992 she organised a series of meetings with groups of panels around the country.

Her report *Care and Protection Resource Panels* (1992) concluded that panels varied considerably in 'most aspects of their organisation and functioning', and the 'degree to which they have been able to become an effective part of the care and protection process'. Some panels were 'strong and active' and a 'positive part of the care and protection process', others, however, continued to 'struggle'. Most panels fell 'between these two extremes'. They served an organisation (CYPS) which had budgetary and other controls over them, but 'which often has an ambivalent attitude towards responsibility for them', a situation she believed to be unsatisfactory. Issues raised in her report were discussed with the General Manager of CYPS, and a Care and Protection Resource working party was convened with staff from his office to address these. Beth Wood also wrote a regular newsletter for panel members and a handbook as a joint project with CYPS.

Custody and Access Disputes

Advocating a children's rights approach in custody and access disputes was the basis of a paper by Hassall and Maxwell, (1992) published in the *Family Law Bulletin* and

reprinted as an OCC discussion paper. They pointed out that custody and access disputes were frequently brought to the Commissioner's attention on the grounds that children were suffering as a result of them. Existing law was based, they argued, on a mixture of the ill-defined 'child's best interests' principle, and the rights of parents to exercise authority over the child. This created the potential for inconsistent judgments. They proposed instead a 'fresh approach based firmly on a children's rights or best interests of the child perspective', applying to all proceedings, pointing out that Article 9 of the United Nations Convention on the Rights of the Child (UNCROC) stated that all interested parties in court proceedings should be given an opportunity to participate. But in New Zealand, existing procedures for determining the child's view at the point when their custody and access arrangements were being decided, did not meet this requirement. The paper provoked a lively response from lawyers, and the Family Law Committee of the Wellington District Law Society formed a subcommitee to comment on it.

Children in Court as Witnesses in Criminal Trials

This became increasingly common during the 1990s, largely due to the rise in child sexual abuse cases. Historically, children had been regarded as too unreliable to act as witnesses, and considerable research now went into assessing their reliability. The possible psychological trauma caused by a court appearance, particularly when children who had been sexually abused appeared as witnesses in the prosecution of their alleged abusers, was another important issue. Hassall and Wood initiated publication of a multi-lingual book, *Going to Court: Being a Witness* (1994) in co-operation with the Police and Justice Departments, Courts Division, Victims Task Force, CYPS and the Family Violence Prevention Co-ordinating Committee. When launched at the District Court in Wellington, Hassall and other 'witnesses', including the Minister of Justice and Commissioner of Police, were called to stand by Standards 2 and 4 children from Wellington's Houghton Bay School. Hassall pointed out in a media release that the justice system was in the process of adapting to participation by children, and if justice was to be done, particularly in abuse cases, ways had to be found to ensure children were heard. Recent research had shown that children could accurately recall their experience and 'any argument that they may tell lies or have ideas put into their heads', or not know or accept the importance of telling the truth, also applied to adults.

The rights and welfare of children and young people involved in court processes were further highlighted by Hassall when he was invited to comment on a review of court administration in 1994. Any system needed to be 'sensitive to the needs of children and their families', he suggested, and courts therefore needed to give priority to hearings in which children were involved. For example, they might be more adversely affected by delays than adults, because their perception of time was different and so was their 'ability to put trauma behind them and proceed with their healing and development'. The court environment was also important. As Commissioner,

he had received reports of children being distressed and disadvantaged by having to wait to appear in court, sometimes for long periods, in waiting rooms with no facilities for their care and comfort. Sometimes they were inadequately protected from contact with defendants and their supporters. Court staff needed to be sensitive to the particular needs of children and families and to be given appropriate training.

Dr Ian Hassall

New Zealand's first Commissioner for Children, Dr Ian Hassall, 1989–1994.

Researching Children, Young People and the Act

As the senior researcher, Dr Gabrielle Maxwell played an essential role with Hassall in leading the Office's research effort. She recalls the circumstances of her appointment. At a meeting with the Minister, Dr Cullen, she told him she was 'passionate about researching the Act in areas such as youth justice and family group conferences. He said, 'go and talk with Ian Hassall'. We found we shared the same views and values. A few months later I was offered a job' (Interview, 2002). The Director of Victoria University's Institute of Criminology also wanted her to be involved in research on the impact of the Act, so she shared her time between the Office and the Institute, working on a study of its youth and justice provisions. Maxwell appreciated Hassall's strong support for research and recalls them working well together. 'Ian would do the care and

protection side and I'd do the youth and justice side. I built up the contacts with the police, crime prevention, etc. We'd divide up the media role the same way.' This collaborative approach was evident in other ways, with Maxwell given considerable responsibility for writing letters and press statements and giving addresses.

In June 1991 the Office released *An Appraisal of the First Year of The Children, Young Persons and Their Families Act 1989*. It was a collaborative effort, written by Hassall, Jeremy Robertson, Dr Allison Morris (a lecturer at Cambridge University's Institute of Criminology who was on leave at Victoria's Criminology Institute), and Maxwell. Papers included an examination of the FGC as an innovative method of involving families in statutory care and protection and youth justice processes, statistical information on young people coming to attention under the Act, and a study on the pattern of juvenile crime. Answers were provided to several questions being raised about the Act's operation. Reports had suggested the police were walking away from dealing with juvenile crime because the Act caused them difficulties. But the results did not support this, indicating that the types of offences detected and ages of young offenders were very similar, both before and after the Act's passing.

Doubts had also been expressed that parents would attend FGCs and take responsibility for their children. This was also contradicted by the results which showed that families were participating, reaching agreements with social workers or police and forming realistic future plans. Concerns had also been raised about whether families would emphasise the accountability of their young people. In fact, it was found that plans were including decisions to repay victims and impose penalties on offenders. Whereas in the past, large numbers of children and young people had been taken from families and spent lengthy periods in special homes, most now remained with their families.

The authors found that whereas in 1984, 29% of young offenders were arrested, in early 1990 only 6% were arrested. In 1984, 45% went to court, compared to less than 10% in 1990.

They concluded that

> … in 1990, a total of 9566 FGCs were held in a variety of styles and settings. The information we have tells us where children and young people were placed. The Act's aim to keep families involved with their care is being fulfilled. What changes this has made to the well-being of children, their families and society needs further consideration.

These were important findings, and an early indication of the value of the research-oriented approach Hassall was promoting. Some questions were also raised about possible vulnerabilities in the new FGC approach. In particular, might it allow social workers and enforcement agencies to manipulate family decision making?; did families always have enough information on which to base their decisions; were resources and support services available to families in difficult economic and housing circumstances without adequate skills to manage?

Hassall made his own view clear with some hard-hitting comments such as 'The reliance on community resources required by the Act has not been matched by the provision of new programmes and services'. He identified problems arising from the new emphasis on family responsibility, including:

> … problems of finding suitable service providers, obtaining approval of the new programmes, funding the programmes and ensuring accountability have delayed developments. The intended reliance on iwi authorities for service for Maori people has been handicapped by delays in creating and resourcing those authorities … the reality of family empowerment depends on resources and support services. Many families are living in poor circumstances, without adequate incomes, in poor quality housing and without the support of others in caring for their children and acquiring skills in managing their families. The rhetoric of family responsibility can readily lead to the reduction of the support of the state sector which is essential to the well-being of many families.

Availability of Information

In *Statistics in the First Year* (1992) Maxwell and Robertson proposed that further, more extensive research was needed to evaluate whether improvements were actually taking place in the way children were being cared for and protected as a result of the Act. This question could not be answered adequately just by quarterly statistical returns.

Hassall and Maxwell were to express frustration on numerous occasions at the extreme difficulty, as they saw it, in obtaining the kind of information and funding they needed to monitor and research the Act's operation effectively. The same concern was raised in the Office's submission to the committee (hereafter the Mason Committee) that was established in September 1991 by the Minister, the Hon. Jenny Shipley, to review the first two years of the Act's operation. The submission described the quality of information on the system as:

> … very uneven and there are major gaps. To date, no statistics at all have been forthcoming on Youth Court matters and we understand that none are being routinely collected by the Department of Justice. Statistics from the DSW have been collected on an interim form with partial success. But until such time as CYPs is in operation the information will continue to be very limited and, at times, difficult to interpret. Information is not yet available to us on the type and quality of the reports that can be expected from CYPs.

The submission also noted that proposals to conduct long-term research on the Act's outcomes for children and families had not been approved, adding that any research undertaken needed to be independent of the Department.

The Mason Committee added its own concern about this absence of research and recommended that the Office undertake it. The Government accepted the need for

independent research of the Act's operation, and directed that officials from Social Welfare and Justice consult with the Commissioner and report on the most appropriate way to carry that out.

However, staff continued to feel strongly that they could not obtain the information necessary, and a sense of frustration remained. The matter was raised again in Hassall's next annual report. Information needed was 'unfortunately in many instances … lacking'. He acknowledged that difficulty arose partly from frequent DSW restructuring, but identified a list of areas where essential information was 'not forthcoming'. Writing to the Director General in March 1992, he complained that 'some difficulties' continued in obtaining required information. While individual Departmental officers were almost always helpful in responding to requests, 'the problem chiefly seems to lie around discovering whether or not information is held, who holds it, and in obtaining full details'.

The issue was also taken up by Maxwell.

> Newspaper articles daily attack the Children, Young Persons and Their Families Act 1989. What we badly need, however, is information on whether or not it has been effective. What has it really done to the lives of children and their families is the question we need to ask. Are children being protected from abuse? Are families being helped to provide a better environment for their children? How many children are getting into trouble with the law, and how are they being dealt with? How does this compare with what used to happen before the Act came into force? (Maxwell, 1992)

Information was lacking from the Departments of Social Welfare and Statistics to answer these questions.

Recalling her experience during this period, Maxwell views it partly as the frustration of

> … doing research in a human rights organisation and under the Act. People who occupy these roles often get difficulties from Government. They are often not popular with Government. The Act said we were entitled to any information we wanted. But this was never true. We never got it. The DSW was very reluctant to give us information. It was a case too often of "No. We can't give you that report." It made undertaking our statutory monitoring and research role more difficult. We were constantly on the horns of a dilemma. As researchers we needed to get information, on social welfare residences for example, but we couldn't get it. This created a major problem for a vital function of the Office. It raised questions about the legitimacy of us doing the job we were set up to do. As the years went by we were able (through the Department) to see deaths in custody reports and comment on them. But we couldn't do our own reports. Child and protection cases also began to be handed over to other organisations, like Barnardos, so we couldn't see them anyhow.

However, Mike Doolan had a different perspective when I raised these criticisms with him. He felt that information was often requested that 'the Department did not collect or hold. The Office of the Commissioner for Children had a statutory right to access any information it wanted. It couldn't have been withheld from them. I feel the Department bent over backwards to give them what it had.'

Gordon McFadyen, now a senior advisor in the Commissioner's Office, held a senior position in the Department at the time. He recalls that data-gathering and analysis within the Department itself was still very under-developed nationally. The Department's priority, particularly given the restructuring that was taking place, was not on gathering the kind of information the Office sometimes required. It was 'often not there in a form adequate to provide, rather than any deliberate unwillingness to share'.

Nevertheless, research on the scale the Office wanted to undertake did not eventuate. Margaret Davidson, who lectured in Community and Family Studies at Otago University, commented in 1994 that without 'ongoing research and monitoring it is difficult to judge whether children are merely drifting in family care instead of drifting in alternative care. Certainly children have been removed out of institutional care, but are they better off? (Davidson, 1994).

Hassall recalls that

> … there were two barriers to carrying out a full-scale study. One was cost. The cost of a minimum evaluation of the care and protection procedures was estimated at half a million dollars. The money was not forthcoming despite repeated submissions. The second barrier was the Service's delay in co-operating. This may have simply been the way a large bureaucracy operates in taking endless time to decide things. There were protestations about the difficulty of obtaining meaningful outcome information, and about the inviolability of the case records and so on (1999).

Hassall retains a strong sense that this was an opportunity missed. A 'concerted effort … might have transformed the status and quality of parenthood in New Zealand … but we needed to know how we were doing and to make changes in law, policy and practice accordingly. We did neither. We did not set up a process of outcome evaluation and so we had no basis for developing the system into an effective instrument of change' (ibid.).

Research Activity

Despite the frustrations described, an active research programme was quickly established. The outcomes of research into the Youth Justice provisions of the Act were referred to earlier, and these demonstrated on a small scale what was possible. Work began on reviewing the impact of poverty on children and the cost of maintaining children. Considerable effort also went into promoting the need for

research into children and young people by government departments. Liaison with researchers at Victoria University's Institute of Criminology continued. Research proposals for the Health Research Council and Child Health Foundation were reviewed, and a contribution made to a Human Rights Commission research project on 'Out of Family Care'. The need for research into the social impact of child support was identified, and a researcher commissioned to work on the New Zealand plan of action for the UN Declaration at the World Summit for Children.

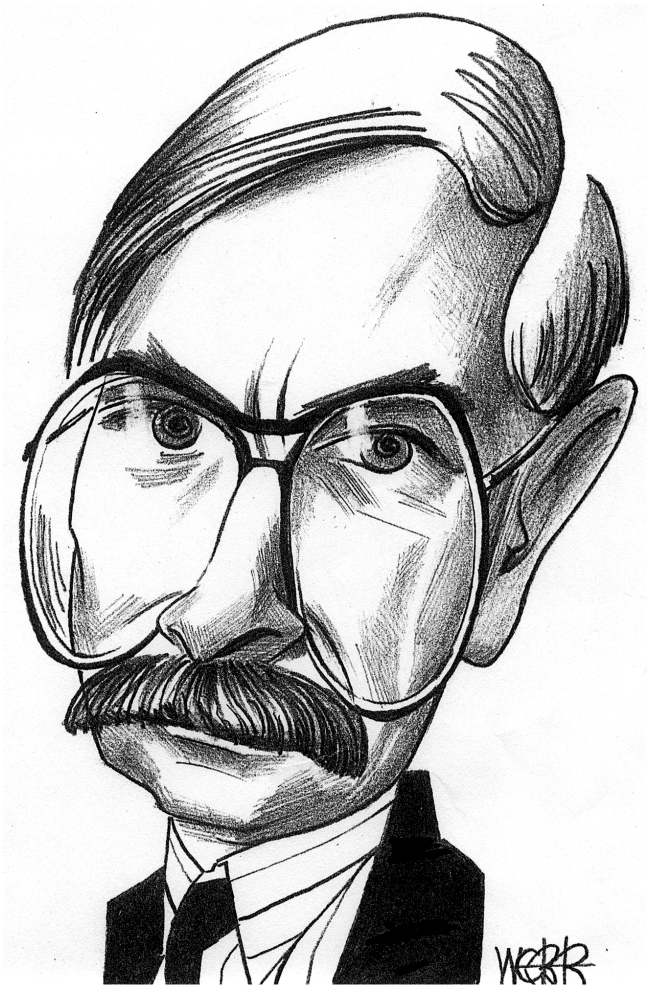
Autonomy for the Office

In a supplementary submission to the Mason Committee, Hassall had recommended that the Office be established under a separate Act of Parliament. He argued that it was undesirable to have the Office responsible for monitoring a Department (DSW) that 'fed it' by providing its budget. However, Mike Doolan, in the DSW at the time, while acknowledging that there may have been some justification for such a perception prior to June 1992, claims that the split of DSW into business units, with the Commissioner reporting to the Corporate Office, overcame this difficulty because 'the social work section of the Department never had any day-to-day oversight of the Office. The perception may have persisted that it did, but things did not operate like that in practice'.

Nevertheless, the Office's submission claimed that greater autonomy would make it clear that it stood in its own right and was expected to consider matters affecting children in Departments other than the DSW. The Commissioner needed to be 'administratively and financially independent of the Department of Social Welfare' to fulfil this monitoring role and other functions. The status of Officer of Parliament, which provided such independence for the Ombudsman and Commissioner for the Environment, was suggested as an appropriate model. Another recommendation was that the 'present catch-all statement of the Commissioner's powers in section 412 should be supplemented by specifying certain powers'. These should include a requirement that information be made available to the Commissioner when requested, that access to people be ensured 'without unreasonable delay', and that 'explanations be made for failure to act on recommendations'. This would also extend to the Commissioner, powers available to other investigatory bodies such as the Ombudsman. Additionally, the Office's budget should be sufficient to ensure that research into the effects of the Act had the 'necessary scope and quality'.

The Mason Committee accepted these recommendations. However, the Government's response was that they involved 'significant changes to the status, independence and powers, and financial resources' of the Commissioner, which would need further consideration. No changes were in fact made at this time. But the need for greater autonomy would continue to be advocated by successive commissioners, and some other commentators. In *An Independent Voice for Children* Bill Atkin, a Reader in Law at Victoria University, revisited the Mason Report's recommendation for greater autonomy and added:

The Craig Manukau Report is a sign of the Office of the Commissioner for Children really flexing its muscles and not being beholden to current ideology. Maybe the time has come to give the Commissioner genuine constitutional independence …. It is understandable that in a time of high unemployment, strained social conditions and fiscal stringency a department like the Social Welfare Department will be stretched and will make mistakes. This is not so much a reason to complain, as a reason to ensure that there are proper checks and balances. As we enter the United Nations International year of the Family, the time may well have arrived to … equip the Commissioner for Children with the status recommended by the Mason Report (Atkin, 1993).



Office of the Commissioner for Children

Commissioner for Children, Dr Ian Hassall 1989–1994

The Education Sector

Searches at School

> Soon after school started a group of teachers with lists of names went to a number of classrooms and asked boys whose names were on the list to accompany them and bring their bags. The boys were led to offices in the science block and in separate rooms, sometimes in pairs, but mostly singly, and in the presence of two teachers were searched. First the contents of their bags were examined item by item. Then the boys were asked serially to remove and replace jacket, jersey, shirt, shoes and socks and trousers. Each item of clothing was searched as it was removed (Report, 1991).

This extract is from Hassall's 29-page report on a highly publicised event at a boys' high school, acting upon a complaint from a parent on behalf of other parents. He concluded that the search, apparently looking for drugs, had failed to meet standards of respect for the students' rights as set out in the school's own charter and in accordance with several sections of the New Zealand Bill of Rights. Recommendations were made to the Ministry of Education about the need to provide further guidelines on student rights in charters, and to boards of trustees and staff about appropriate disciplinary procedures and the need to become acquainted with the provisions of the Bill of Rights.

School Rules

> A member of the public complained about a school board of trustees which made a policy saying that teachers could smoke in classrooms up to 15 minutes before students arrived for class. There was a debate about whether this contravened the Smokefree Environment Act 1990. My view is that a classroom is a public place and that the Act was therefore being contravened. A local resolution of the problem has subsequently occurred (Annual Report, 1993).

These were just two of many cases reflecting the extent to which complaints arising in education and other non-CYPS-related sectors now increasingly came to the Commissioner's attention. 'The rate of complaints about issues related to schools is rising', Hassall wrote in his 1992 report, recording 29 per cent of all complaints now coming from this sector. A year later he noted that 60 per cent of complaints received by the Office during the year fell into the non-NZCYPS category.

> Most of the complaints in the "education" category, came from parents who believed that their child had been unfairly treated or discriminated against in the course of disciplinary measures used in schools. In most cases the parents making complaints felt they had not had their grievance adequately heard or responded to.

Other education complaints covered suspension and expulsion procedures, bullying, inadequate supervision of students, truancy procedures and the supply of confidential information about children and families from the Special Education Service (SES) to the Ministry of Education. Aspects of teacher behaviour and lack of facilities for disabled children were also identified.

The disestablishment of the Parents Advocacy Council may have contributed to the increase in educational complaints. However, with some notable exceptions such as those referred to earlier, Hassall rarely investigated school complaints himself at this time. His view was that mechanisms should exist within the education sector itself to do this. Involvement was therefore generally limited to advising parents of their legal rights and the steps they needed to take to have their concerns addressed. However, when a complaints advisory service was eventually developed, Beth Wood recalls the Office becoming inundated with all sorts of complaints and requests. This had the effect of 'to some extent paralysing the place', largely because no other central body was set up to deal with them.

Appeal Procedures

Further issues relating to student and parent rights in schools arose following the strip-searching investigation. In 1992 Hassall again wrote to the Secretary for Education, Dr Maris O'Rourke, copying the letter to the New Zealand School Trustees Association, drawing attention to the continued absence of appeal procedures available to parents dissatisfied with Board of Trustee responses to complaints. Ministry officials acknowledged that since the abolition of the Parent Advocacy Council no other body (except the Ombudsman) had been empowered to deal with complaints by parents against school boards, and subsequently met with Hassall to discuss the matter. But in March 1993 he again wrote expressing concern at the continuing lack of policy and guidelines.

Parallel with these efforts, staff worked with Newspapers in Education and UNICEF to develop a resource kit for teachers, *Child Rights – Adult Responsibilities* (1992). Its purpose was to involve children themselves in discussing their rights. Launching the resource in November 1992, Hassall commented:

> I believe children have an acute understanding of what is fair …. Exercised during childhood into adulthood, this understanding and with it the faith that fairness will prevail, are the foundations of a just society. It is an important adult responsibility, then, to protect and develop these attributes in children.

In the same year an information sheet outlining the functions of the Office was sent to every New Zealand school. This led to increased enquiries from children about rights issues.

Suspension Expulsion and Truancy

Lyn Eden wrote to the Ministry in September 1991 that the Office was frequently being approached by people 'very concerned about high levels of non-attendance at schools in their communities'. She asked whether any progress had been made on the report of a Ministry Working Group on School Attendance she had been a member of. In October, Hassall again expressed concerns about truancy, this time to the Mason Committee, advising it that members of Care and Protection Resource panels and others identified it as 'an unresolved problem' (1991). While some schools 'appeared to have developed effective means of pursuing enrolled students who fail to attend, others have not'. Repeated failure to attend school between the ages of 6 and 15 should, he recommended, be included in the definition of a child or young person in need of care or protection under s.14 of the Act, and the FGC and Protection Resource Panel consultation processes should be invoked after due warning.

These issues continued to concern Hassall throughout his term. In May 1993 he wrote to the Ministers of Education and Social Welfare, advising them of public concerns that 'some children and young people simply disappear from school rolls and no-one is responsible for checking that they enrol elsewhere. There appear to be no statistics to either support or refute this view'. A Ministry of Education and Children and Young Persons Joint Truancy protocol on the matter existed, but needed reviewing.

Bullying

The Office was one of the first organisations to identify school bullying as an important issue. 'How Much Bullying Goes on in Schools'? Andrea Jamison asked at the start of an article on *The Nature and Extent of Bullying in New Zealand* (1994). She reported findings from a Palmerston North survey of primary and secondary schools which concluded that 'Bullying is not a behaviour that we should continue to cover up or believe is non-existent'. The Office, in conjunction with the School Trustees Association, Special Education Service and Police, hosted a visit by Delwyn and Eva Tattum, co-directors of the Countering Bullying Unit in Cardiff and international experts on the problem.

Submissions

Making submissions related to the education sector became another regular activity. Hassall made a lengthy submission to an inquiry into *Children in Education at Risk Through Truancy and Behavioural Problems* (1994). His 12 recommendations included

the need for a co-ordinated national approach to enrolment, a more effective approach to truancy, clarification of the grounds for suspending or expelling students under the Education Act, and a range of programmes, including more 'activity centre' type classes for students with behavioural problems.

A request that no child should be excluded from the nearest state primary school within walking distance of their home was included in a submission to the 1991 Education Amendment Bill. Another, in the same year, to the Education Reform Bill, made a strong plea for considering the views and rights of students in areas such as attendance, school charters, possible school mergers, and the right of a student to be represented on Boards of Trustees.

Abuse

Hassall and Wood published a report entitled *Minimising the Risk of Sexual Abuse of Children in Early Childhood Services* (1992), and Wood contributed significantly to a book on a similar theme published as a collaborative effort between the Office, the Ministry of Education and the Early Childhood Development Unit. The material used was further developed by Wood and Mandy Smith, an educator with the Wellington Sexual Abuse Help Foundation, into a report intended for all organisations working with children, published by the Office (Smith and Wood, 1993).

Advocating a No-hitting Approach

A correspondent expressed disappointment to Hassall in 1990 that he had not responded publicly when a school board announced that it was going to adopt a caning policy, and subsequently caned one of its pupils. Hassall replied 'I certainly don't agree with the policy, the practice, or the attitude towards young people that they reflect', but he was 'reluctant to get involved as a bit-player in media dramas. I doubt that a ritual protest from me, which is very likely how it would have been presented, would make much difference.'

Initially, therefore, Hassall appeared rather lukewarm about getting involved in a no-hitting campaign. He acknowledges that he was not as committed to stopping children being hit at the time as he later became.'I have not to date wished to put energy into promoting a law against hitting children, although there are people who have suggested that I should', he replied to another correspondent in October 1992, advising her to get in touch with people like Robert Ludbrook and Jim Ritchie, who were advocates of this cause. Why did his attitude change? He recalls that:

> One important influence was a television programme I saw. It was in 'fly on the wall' style and I saw, I think for the first time, the basic injustice and brutality of hitting children. I was certainly encouraged by my friend Peter Newell in

> London, who has headed a world-wide crusade for the last 10 years at least against hitting children.

He subsequently made a submission to the Education (Corporal Punishment) Amendment Bill in December 1992, strongly opposing the reintroduction of corporal punishment in schools. This stated in part:

> I am opposed to this Bill because it is manifestly unfair to and discriminatory against children, contrary to their welfare and against society's interests …. The Bill permits to be perpetuated against children, solely on the grounds of their age, deliberate acts of violence which would not be tolerated by adults and which if perpetrated against adults would be thought of as an assault …. If this Bill were to be passed it would be a repudiation by Parliament of progress being made against violence and a retreat to a more brutal past.

Encouraged by a positive public response to the continued exclusion of corporal punishment in schools, Hassall now began to take a much stronger line against the hitting of children in society generally. When a paediatrician wrote to him in December 1992 about the problem, he sent him a copy of the above submission, adding that he had also

> … sounded out the prospects of a Bill to amend the Crimes Act to remove the licence given to parents to assault their children. There had not been much encouragement, but that shouldn't deter us. One proposal is that we should, as part of the International Year of the Family 1994, raise the question, 'Can we learn to do without hitting our children at home (as we learned to do without hitting them at school)?'

Now becoming a staunch advocate of this position, Hassall wrote letters seeking support to bodies such as the Plunket Society ('I am asking that the Society consider taking up the challenge of ending the physical punishment of children as a practice sanctioned by the law'). A correspondence began with Dr Jane Ritchie, a long-time advocate of a no-hitting approach, with copies forwarded to the Minister of Social Welfare, Jenny Shipley. 'You ask about my strategy', he wrote to Ritchie. 'It is to ask a public who show some signs of being sickened by violence, to consider stopping hitting their children as a means of reducing our dependence on physical violence toward one another.'

Support was also sought from the National Council of Women, and the Labour Party Spokesperson on Social Welfare was asked to take the matter up. 'If we can learn to do without hitting children at school, can we learn to do without hitting them at home?' Hassall asked again in a lengthy article on *The Physical Punishment of Children*' (1993). This documented the end of corporal punishment in schools, including the 'almost universal condemnation' of the attempt to reintroduce it, overseas experience, and answers to some commonly asked questions. Sweden, the

first country which 'gave children the same legal protection from assault as adults', was cited as evidence that it was possible to do without hitting children at home.

Gabrielle Maxwell reported the results of research into how parents disciplined their children, and their attitudes towards discipline (1993). The Office also commissioned a Heylen telephone survey. The findings, that 'hitting' a teenager and 'thrashing' a child were no longer seen as acceptable by most New Zealanders, were viewed as encouraging, and a considerable change from the past. Seventy per cent of respondents had smacked at some time, but 89 per cent had never 'hit their child with a strap or stick or something else', and only two per cent had ever given their child 'a really severe thrashing' (Press release, 16 September 1993).

Anti-smacking pamphlets, *Think About It* and *Hitting Children is Unjust*, were launched at a Wellington seminar co-hosted by the Commissioner and the Wellington Care and Protection Resource Panel in 1993. This was attended by nearly 200 members from community groups and agencies and gained considerable media attention. In his closing address, 'Alternative Methods of Managing Children', Dr John Langley paid a tribute to Hassall's efforts:

> I think what he has done here is an extremely worthwhile thing. He has started a process which I believe is one of the most fundamental and crucial in the future development of New Zealand and the kind of society that we actually want to live in. I can't speak highly enough of what he has done and I only hope … it continues to take further strides in the future (Langley, 1993).

Further pamphlets and posters followed. *Living in a no-hitting place* (1993) was designed to inform parents, families and people working with children of some of the alternatives to using physical punishment. In 1994, *Think About It: Is hitting your child really a good idea?* was re-printed in English, Maori and Samoan. The strong public stance against hitting brought a reaction from opponents, exemplified by the Rev Graham Capill, leader of the Christian Heritage Party. When Hassall issued a press statement that smacking was a crude and unjust way to discipline children and should be outlawed, Capill claimed that this would be an 'assault on parents' freedom to exercise their God-given duty to discipline children'. It would 'force Christian parents to choose between the law and God's word that to spare the rod was to spoil the child … Dr Hassall had been advocating this since the day of his appointment'. However, he would not be able to obey such a law. Examples from letters to newspapers and editorials advocating 'smacking as a right' and anti-smacking as a ban 'against God's word' were published in *Children* to illustrate the continuing existence of such views in society.

The Health Sector

The case of X, a young severely intellectually disabled woman, was heard in the High Court in December 1990 and received considerable publicity. Her parents sought

consent for a hysterectomy to relieve her of the distress that menstruation would cause in her circumstances. Similar cases had come to court in other countries. Because it involved the rights and needs of a young person, Hassall prepared and filed an affidavit (Hassall, 1991). The Judge finally gave consent for the operation, having heard detailed evidence over eight days, but he made use of the extensive evidence collected to set out 17 factors which could be considered by those deciding such cases in the future. This case is mentioned to highlight how Hassall's background as a paediatrician, and the role he had already played in areas such as cot death, swimming pool safety, and child and community health, meant his vision as Commissioner was always going to be wider than just the Act and the Department. Health was a logical area of interest for him.

Various child health matters received attention during Hassall's term. The parents of a child with spina bifida complained that the health authority was failing to supply her with adequate support by way of a properly functioning wheel-chair and sufficient catheters. They felt that the authorities had become antagonistic toward them, had unjustifiably entered certain criticisms into the patient record, and had forfeited the family's confidence. Hassall's investigation involved assessment of the past relationship and provision of services, consultation with the various parties, a search for standards of service provision for spina bifida patients, a set of recommendations and some supportive follow-up. He later reported that the parents were now much more satisfied with the way they related to the health services. They felt vindicated for raising issues, and supported in their difficult role. As Hassall, however, commented, the provider role was not easy either.

The Commissioner's health-related submissions to Parliament included support of legislation to limit tobacco advertising. This used research information on mortality in infants and children attributable to both passive and active smoking, the effectiveness of advertising and sport sponsorship in inducing young people to take up smoking, and the more severe effects on those who took it up early. In a submission to the Health Commissioner's Bill in 1992, Hassall favoured Area Health Boards handling advocacy arrangements for children. Other health or safety issues which were raised, often in submissions to select committees, included children's rights relating to artificial reproductive technologies, cuts to services affecting children, child immunisation, safety of bicycle helmets, and the use of 1080 poison.

Hassall continued his own earlier involvement in cot death prevention, chairing two national meetings in 1990 which aimed to consider the results of the New Zealand Cot Death Study, develop a programme to advise professionals and the public, and monitor anticipated changes in behaviour. In 1991 the Office published a Briefing Paper with recommendations on the effect of the 1987 pool-fencing legislation (1991).

Reviewing Child Deaths

After investigating Craig Manukau's death, Hassall wrote to the four Regional Health Authorities and the Public Health Commission, emphasising that

comprehensively reviewing children's deaths should be an essential part of good health practice. Practitioners and services had 'much to learn from detailed consideration of the circumstances of deaths, and the part they played or could have played in attempting to prevent them'. He pointed out that in the 1980s, the Health Department had encouraged the development of local Mortality Review Committees throughout New Zealand, but under the new health structure no particular body had assumed responsibility for this. Hassall believed that it was now the Authorities' responsibility to take action and he asked them what their policy was.

The replies demonstrated that his concern was justified. The Southern Regional Health Authority described the situation in its area as 'variable'. In Dunedin and Christchurch multi-disciplinary groups reviewed child deaths occurring within the hospital system. However, those outside the hospital were not reviewed, nor were those on the West Coast, South Canterbury and Southland. The Central Regional Health Authority acknowledged it was an issue 'which requires consideration'. Midland Health agreed it was an important function, although its location still needed to be determined.

The charging of a man with the killing of an 11-year-old boy in 1994 drew comparisons with the circumstances of Craig Manukau's death, and came amid growing public concern about the violent deaths of young people. It prompted Hassall to restate his own concern that his recommendations stemming from Craig's death had still not been considered seriously enough by officials. He wrote to the Associate Minister of Social Welfare, Roger McClay, pointing out that he had discussed with the Minister and the General Manager of CYPS the possible regular use of the Office to independently review the deaths of children who had been subject to procedures under the Act.

Furthermore, he advocated a Child Mortality Review Tribunal which would work alongside but independent of any Departmental review, with the power to enforce recommendations. 'It really should be done', he argued, it's wrong if someone dies and no one says it could have been prevented. We need to say, 'where did we go wrong – is there anything we could have done to have avoided this?'

The United Nations Convention on the Rights of the Child (UNCROC)

Hassall worked hard to make UNCROC meaningful in the New Zealand context. According to Gabrielle Maxwell, he was 'really passionate about the right of children to be heard' (Article 12). In developing a set of principles to guide the work of the Office, UNCROC seemed a logical framework. Maxwell recalls that

> The compatibility between the 1989 Act and UNCROC became immediately obvious to us. It gave us an objective rather than subjective basis or benchmark for making judgments. A pattern was established where, if we did anything, we'd start with UNCROC and the Act.

Once established, this pattern was to be followed by all subsequent commissioners, with submissions, investigations and responses to inquiries frequently beginning with a reference to relevant Convention clauses.

The Office played an important role in advocating for UNCROC's ratification by New Zealand. In 1991, the Office convened a seminar on the topic with the National Council of Women, attended by participants from many organisations. Staff provided information for the first country report from New Zealand, explained the Convention's implications for New Zealand law and practice, and were generally active in the period leading up to ratification by New Zealand in 1993. With UNICEF, the Office published a New Zealand edition of the Convention (in Māori and English) in 1992. In *Does the Convention Go Too Far?* (1993), Hassall addressed fears held about the Convention which appeared to be 'the subject of a worldwide campaign against' it, in particular, that Articles 13 and 15 would 'undermine parental authority'. This argument, that advocating for the rights of children would somehow undermine the authority of parents, was one that successive commissioners would rebut, often by making the distinction between children's rights and parents' rights, and pointing out that these could be complementary rather than in opposition.

A tribute to Hassall's efforts in this international context was paid at an International Year of the Family Symposium in October 1994. Mark Henaghan, of the Law Faculty at Otago University, stated that 'apart from the major efforts of the Commissioner for Children, the Youth Law project, and the New Zealand Law Society's Newsletter to schools, little had been done by government to educate New Zealanders about the UN Convention' (Henaghan, 1994).

Policies for Children and Families

Hassall was a keen advocate of New Zealand developing a coherent child and family policy. The Office prepared a brochure advocating such a policy and circulated it to all candidates during the 1990 election campaign. In a September 1990 press statement, Hassall praised the Prime Minister's decision to attend a World Summit for Children in New York. But he expressed 'considerable concern … that none of the main parties have produced a Child Policy as part of their election planning', adding that such a policy 'must be established as a permanent feature of the political landscape'. In November, the Office held a three-day national seminar on developing a national child and family policy which was opened by the Minister of Social Welfare. Attended by two overseas speakers, and people from a wide range of backgrounds relating to children in health, education, welfare, voluntary groups, and including social scientists and politicians, this helped focus media and government attention on the concept of a child and family policy and some of its possible content. Topics discussed included changes in family structure and definition, the need for employers to recognise the central place of families in the lives of employees and to adapt working conditions to family needs, and the support families needed. The proceedings

were published as *Toward a Child and Family Policy for New Zealand* (1991) and proved popular. But, 'We do not yet have a child and family policy', Hassall noted wryly (1992). He subsequently made a significant contribution to the report *Children in New Zealand in the 1990s* (1995), which examined the status of children and programmes for them, and formed part of New Zealand's response to commitments made at the 1990 World Summit for Children.

The End of the Hassall Term

Ian Hassall's term as the first Commissioner ended on 31 August 1994. The job had required him to establish procedures for overseeing the Office's responsibilities as set out in the Act, and its credibility and value amongst politicians, administrators, workers in child welfare and other sectors, and the general public. Most New Zealanders at the time would have had little idea of what a commissioner for children involved, and this attitude had to be changed. The staff wrote a collective tribute to Hassall in the newsletter, thanking him for 'all the intellectual stimulation, learning, hard work and fun we have shared together'. Gabrielle Maxwell recalls him doing a 'superb job', including being generous with his time both in professional and personal matters. Pauline Coupland, who worked with him in his final year, recalls him being 'passionate about children and young people. He communicated well with them both in English and Māori. Ian was a warm, kind and modest man.'

Reviewing the Office's operation and some of its achievements at the end of his first three years, Hassall had acknowledged that much remained to be done:

> I have no doubt that an office such as mine could have made a greater contribution than we have done to promoting child health. Perhaps we have not paid enough attention to the opportunity such an office provides for networking and rallying those with children's interests at heart …. Perhaps we have not been forceful enough and public enough in trying to influence policy, although I don't believe an office such as mine can be a platform from which to regularly launch public attacks on the government of the day (Hassall, 1992).

Rather more public advocating for children was in fact to become a hallmark of Hassall's successor.

CHAPTER

3

The Second Commissioner – Laurie O'Reilly, 1994–1997

Laurie O'Reilly had practised family law in Christchurch for 30 years, contributed to a legal textbook on the subject and given lectures on it, helped pioneer the role of counsel for the child and set up the first roster of youth court legal advocates. Principal Family Court Judge Peter Mahony described how, as counsel appointed by the Court to represent children, O'Reilly brokered numerous settlements between disputing parents. Where a case could not be settled, he was

> … a fearless advocate for his client. There was something of the front row prop in Laurie O'Reilly's other pursuits, including his legal cases. He met his issues head on; he was determined and not easily deterred when convinced of the merits of his case – attributes which later characterised his advocacy for children as their Commissioner' (Mahoney 1998).

Working with 'street kids' in the late 1960s, O'Reilly had run a drop-in centre for nearly 15 years which provided other residential care services and employed youth workers. With his brother he had pioneered the 'detached youth worker' scheme, and with his wife Kay fostered several children in his own family. These experiences led him to an interest in children's rights, and he had served on several national committees, including NACPCAN.

Discussing his appointment, O'Reilly paid tribute to his predecessor (*Children*, September 1994). He acknowledged their past co-operation, which he was confident would continue, and the many fundamental beliefs they shared. He and Hassall were 'different personalities coming from different disciplines', which would 'inevitably mean there will be a different focus and approach'. However, he was committed to building on the 'good work' that had been done.

Kay O'Reilly

The second Commissioner for Children, Laurie O'Reilly LLB, 1994–1997.

Gabrielle Maxwell recalled that the new Commissioner certainly was a 'different personality altogether' from his predecessor, and viewed his legal background as one reason for this. As a family court lawyer he was 'keen on playing a bigger role' in the courts as Commissioner, despite the Act forbidding his involvement. This became a 'cause of tension' between him and others. He was 'very strong on advocacy … based on argument and passion'. Another former colleague recalls 'more of the public evangelistic, table-thumping approach', a very different model from the more 'research and evidence-based advocacy of Ian Hassall'. According to Watkins (1995), O'Reilly was 'not afraid of grasping a few nettles!'.

An article in *North and South* at the end of his first year in office described O'Reilly 'talking up a storm. He travels further, spends more and speechifies louder than his predecessor'(Pankhurst, 1995). He was also 'pushing the profile of his little office higher than ever before' and had 'snared headlines' with several investigations. He 'generates heat and controversy', campaigning against the law allowing parents to smack their children. O'Reilly was quoted as describing his approach as 'more proactive' than his predecessor's, involving developing good links with 'grass-roots' groups, from foster parent groups to kindergarten associations and women's refuges.

While the new Commissioner obviously wanted to put his own stamp on the office, Maxwell recalls there being much more overlap with his predecessor in some areas than might have been expected. He was 'passionate about children … used the same language on the issue of violence against children', and continued to emphasise the importance of the UN Convention. He 'started talking about child poverty and got into trouble with the politicians, just like Ian had'. However, he also managed to 'get a large percentage of middle New Zealand within the range of the Office, something Ian had not been able to achieve'.

The Work of the Office

Complaints

O'Reilly's first annual report recorded a spectacular rise in complaints, which doubled from 183 in 1993–4 to 350 in 1994–5. His more public advocacy of children's rights,

numerous public presentations and wider view of his role undoubtedly contributed to this. Greater public awareness of children's rights (and the existence of the Office) during the 1990s and a more litigous society in general, may also have contributed.

The rising tide of complaints again raised the perennial question of the level of priority that was to be given to emphasising a complaints role rather than an advocacy/policy/research role addressing more general systemic matters affecting children. Beth Wood recalls that the increase in complaints began to 'consume the work of the Office'. Almost half the complaints (49%) were CYPS related. Education, which was becoming increasingly prominent, accounted for 24%, followed by Custody and Access (7%), Police (4%), Health (3%), Courts (2%) and other (11%).

While O'Reilly found some complaints 'unjustified', others had drawn his attention to 'serious shortcomings in practices or services which affect children'. In some cases he had been able to achieve a better outcome for a child as a result. Shortcomings in several organisations dealing with children had been identified and, overall, the complaints from a wide range of individuals and agencies had allowed him to monitor services, particularly in welfare, education and health.

Enquiries

Enquiries to the Office, including requests for information, also doubled, from 682 in 1993–4 (up from 250 in 1992/3) to 1,264 in 1994–5. O'Reilly identified a 'high level of frustration' expressed by many enquirers, stemming at times from the difficulties experienced in accessing information from other agencies.

CYPFS

In 1996 the New Zealand Children and Young Persons Service became the Children, Young Persons and Their Families Service (CYPFS), the addition of 'Family' symbolising the change of approach embodied in the Act. CYPFS management quickly became aware, as others had, that the new Commissioner had a very different approach from his predecessor. Mike Doolan recalls O'Reilly having a personal style and interests that 'took the Office in quite a different direction from Ian Hassall'. He was 'totally committed. What you saw was what you got, and there wasn't a malicious bone in his body'. Mike remembers some things working well in relations between O'Reilly and the Department of Social Welfare, mentioning the child-death review process as one example of a 'very productive' development.

O'Reilly soon raised with the Department the long-standing grievance about difficulty in obtaining information, which he said had 'hampered the Office in its monitoring role in the past', and was now affecting his own situation. Then, at the start of 1996, he upset Margaret Bazley, the Department's Director-General, when officials advised her that he was intending to make a critical public statement about inadequate CYPFS funding and staffing issues. She warned that before he did so, she

needed to share with him concerns she and the Minister felt 'about any perceived intrusion by your office in the day-to-day management of the Department'. As Commissioner, he had been 'fully advised on various management issues in several areas' which were now being addressed. It was important these efforts were not 'hindered or complicated by undue public debate inspired by disaffected staff leaking confidential information'. She advised O'Reilly that, as Commissioner, he needed to recognise that overall management of the Service was her responsibility:

> If I am to discharge my duties properly then I need to do so without any perception of interference from the Office of the Commissioner for Children. It is not helpful to be seemingly condoning the disloyalty of staff who leak information ….

Backing down was rarely, however, O'Reilly's preferred response. He replied that most of the issues she raised had already been clarified with the Minister, the Hon. Peter Gresham, and the Associate Minister, the Hon. Roger McClay, adding that 'I do not accept that I was interfering with the day-to-day management of the Department', and expressing 'surprise' that carrying out his functions under section 411 of the Act might have been perceived as condoning the disloyalty of staff. He was supportive of Bazley's efforts to gain further funding for the Service but claimed his own 'independence had been compromised' by the existing funding process because he had no direct representation when the funding bid for the Office was made.

As other correspondence reveals, O'Reilly was soon on the offensive again. He praised a social worker for writing to him about financial constraints affecting his job, advising him that he had been 'conducting my own campaign' at ministerial and national management level. This had included writing to the General Manager of the Department expressing concern that social workers who communicated with him had been threatened with disciplinary action. He acknowledged that protocol required him to communicate through area and site managers, and he did not encourage front-line social workers to communicate directly. However, he would 'certainly not disregard information they bring to my attention … unless more of your colleagues come forward … the present situation will continue and children and families will be significantly disadvantaged and put at risk'. He had recently 'challenged the Director-General to acknowledge the conflict between her role as business manager and advocate of the Government's fiscal policies, and that of guardian and parent of children'. He agreed with the correspondent that the Director General 'sees the Public Finance Act as the dominating piece of legislation that guides and dictates her work and priorities'.

O'Reilly was not alone in holding such views at this time. Bronwyn Dalley commented in her comprehensive history of child welfare in New Zealand that Treasury-driven budgetary constraints forced the Department to adhere to the Public Finance Act (1989), while simultaneously working on child welfare matters. The first General Manager of CYPS, Robin Wilson, told her that:

> Funding is so tied to the Act. I'll say this, and I don't know that anyone will believe it, but I swear to you it's true: that the Treasury actually suggested to us, because we couldn't manage with our budget, that we should actually do fewer child abuse investigations … that's just unbelievable! (Dalley, 1998, p. 361).

Dalley herself commented that

> … many families find themselves without the resources to cope adequately with the central role in children's welfare that is now accorded them. Serious budgetary constraints, and potential conflict between the provisions of the Public Finance Act and the Children, Young Persons and Their Families Act are very real issues within the government agencies which deliver welfare services to children. The need to work within the new fiscal climate also has ramifications for how the state delivers child welfare services to communities and families, and influences the extent of those services (ibid. p. 363).

The Legal/Justice System

The place of children and young people in the justice and legal systems remained an important part of the Office's work, as the following examples illustrate.

Young People in Police Cells

Complaints that young people on remand were being held in police cells continued to be received, with five such complaints in the first six months of 1997 alone. One, from a lawyer and advocate in the Youth Court, described finding at least five young people under the age of 17 years old being held in the cells during a Sunday visit, waiting for placement at a suitable residential facility. He described the absence of such a facility as 'intolerable' and 'subverting' the aims of the 1989 Act. Another complaint, from the MP for Manuera (George Hawkins) described two youths being held in custody for 16 days, which appeared to be a recurring rather than an isolated problem.

Research carried out into the complaints received involved gathering information from

Kay O'Reilly

Laurie O'Reilly undertook many speaking engagements to increase the profile of the Office.

youth court judges, youth advocates and youth justice workers, and talking with young people about their experiences. A comprehensive and hard-hitting report, *Young People in Police Cells* (1997), was prepared, noting that in the previous 12 months, some 140 young people had been held in police cells for up to 21 days. The report included media reports and one from Principal Youth Court Judge David Carruthers, described as 'appalling' the number of young offenders being locked in police cells because no beds were available in Social Welfare residences.

The report cited similar critical comments by judges in five other cases. Sitting in the Rotorua Youth Court, Judge P. Whitehead had expressed 'considerable alarm and concern' at having to remand a young person in a police cell, remarking that no adult prisoner would be remanded in custody in similar circumstances. In the Auckland Youth Court on the same day, Judge F. McElrea had commented that it was inappropriate for the Police to have to act as an 'overflow facility' for DSW residences because no beds in them were available. 'The Court had been aware for months that there had not been enough beds available' and 'the public interest demands that further facilities be provided without any further delay. The point where judges can sit by and say nothing about a scandalous state of affairs has, I believe, passed.'

The report also identified the length of time young people were being held, the unsuitability of cells for this purpose, the contrast with adult remand facilities, and the legal criteria for remands in police custody. In 'Sione's story', a graphic personal account was given by a 16-year-old of conditions during a six-day remand in the Auckland police cells. He concluded: 'there is a toilet in the cell right next to the bed. It smells … I did not have a shower or change of clothes during the six days I was there. You can wash in cold water. There is no mirror in the cell. I went back to court in the same clothes that I had on when I went into the cells.'

The report also analysed the historical background to the shortage of beds, including DSW policy in the 1980s of closing residential care institutions and keeping young people in the family or community. The Department was criticised for its failure to establish a range of residences, despite its 'long-standing awareness of the problem' and legal responsibility to do so. The report claimed that the Director-General was 'failing in her responsibilities in not making reasonable endeavours to provide such a range', and identified several areas where it was claimed she had failed 'in particular'. A section on 'Human Rights Issues' described the placing and holding of young people in police cells as a 'gross dereliction of their human rights under domestic and international human rights instruments'. Sections from the New Zealand Bill of Rights Act (1990), Human Rights Act (1993), CYP Act (1989), UN Covenant on Civil and Political Rights and UNCROC were all cited in support of this view. The Ombudsman, Human Rights Commission, Police Complaints Authority and UN Committee on Human Rights were also referred to in a section on remedies available to young people.

Child Offenders

Anne began offending at age seven when she was twice caught stealing from school. She received warnings but the following year was caught shop-lifting. At age 15 she was continuing to offend.

Anne's DSW file had begun when she was 14 months old, with a referral from a women's refuge which her mother had escaped to from her husband's violence and alcohol abuse. She expressed concern over her ability to care for Anne, who spent several months in foster care before her mother returned to her husband. The social work assessment at that time was 'Basically inadequate family, but not sure one can do much at present …. No further action meantime'. Over the next several years Anne's mother had four more children and the DSW received numerous referrals from neighbours concerning lack of parental supervision.

This is a brief summary of one of the life and offending histories of 109 young offenders reported in *Child Offenders* (1995), a report to the Ministers of Justice, Police and

Kay O'Reilly

Media exposure on the role of the Commissioner for Children was varied but encouraged debate.

Social Welfare by Maxwell and Roberston. It was written to answer questions about the adequacy of responses to 10–13-year-old children who commit criminal offences, and whether or not criminal court proceedings in such cases would be more appropriate than referral to a FGC.

Results indicated that of the child offenders involved in very serious offences, many had been persistent offenders. Most bore the marks of inadequate care or abuse, and had experienced management difficulties at home and school, and learning difficulties. They were running away from home and experimenting with alcohol and other substances.

Plans developed at a FGC had broken down or not been fully implemented in 72% of cases, and nearly four out of five children re-offended. The analysis suggested that improvements in referral processes, inter-agency co-operation, and availability of services were the best ways to improve matters. Charging the children in a court was not recommended.

Residential Care

A TV crew was filming what was intended to be a positive programme about the Samoa Fa'afouina Trust in Auckland in October 1994. Promoted as an appropriate cultural response to the needs of Samoan young people, the Trust accepted referrals, mainly from the Youth Justice system and for protection under CYPS. The film crew was offered the chance to witness Trust members dealing with young people who broke the rules. The footage showed a young person sitting in a chair guarded by a supervisor while physical punishment was administered.

The Trust's leader was subsequently charged with injuring with intent, pleaded guilty, and was sentenced to 18 months' imprisonment, later reduced to 12 months by the Court of Appeal. The sentencing notes recorded that a total of 97 blows or kicks were inflicted over a period of some three and a half minutes, and there was evidence before the Court that violence had been used for discipline on other occasions.

Asked to investigate by the Minister and Social Services Select Committee, O'Reilly met with agencies and personnel from the Pacific Island community in Auckland assisted by two Samoan consultants (Annual Report, 1995). The experiences of other young people who had been through the agency, community perspectives on its effectiveness and the current crisis, the roles and responsibilities of the Community Funding Agency and CYPS, and services for youth in South Auckland were all examined. O'Reilly concluded that culture can never be an excuse for abuse, identified a lack of residential facilities and therapeutic programmes for young offenders, and

the need for standards, accountability and monitoring mechanisms to be in place prior to approval of cultural social services.

New search and seizure powers in the 1996 Children, Young Persons and their Families (Residential Care) Regulations raised concerns in the Office which were expressed to a committee reviewing the regulations (1997). The new powers were described as 'excessive and unacceptable', seeming to '*limit* the rights of children and *enlarge* the powers of staff'. They would need to be interpreted in the light of both UNCROC and the 1989 Act. If the Department was going to seek such powers, their need and extent should be debated in Parliament by proposing an amendment to the Act. O'Reilly reminded the Committee that CYPS residences were not primarily places for the containment of children and young people. They provided accommodation for those who could not be placed with family or whanau. Some residents were there because they had been removed from their family or carers after CYPS or the courts had determined they were in need of care and protection. But children 'should not be treated like prison inmates'.

A new power allowing seizure of personal property was 'strongly opposed', the Office pointing out that it was currently considering several complaints from residents of the Northern Residential Centre relating to the use and enjoyment of their own property. It acknowledged the need to ensure residents did not bring in items which might cause harm to themselves or others, but the definition of a 'pat-down search' proposed was 'far too wide. It goes well beyond what is normally understood by a "frisk search" or "pat-down search" [and] 'we are completely opposed to any search which involves the running of the hand inside the child's outer clothing'. The need for care in using dogs for searches, and to restrict the use of force only to appropriate circumstances was also emphasised. Disappointment was expressed that the grievance procedure provisions in the regulations had not been implemented, and no grievance panels established. The submission concluded that:

> There are many indicators that the residential services of CYPS are in crisis. We have received a torrent of complaints that young people are spending days or weeks in abysmal conditions in police cells because of a lack of suitable accommodation. Our children and young people deserve better (1997).

The Office also became involved when allegations were made regarding the treatment of young people who had been in the Adolescent Psychiatric Unit at Lake Alice Hospital in the 1970s. O'Reilly wrote to the Minister of Health in 1997 supporting a Commission of Inquiry. He raised concerns about the treatment, and produced evidence that the Child Welfare Department had placed some young people without legal authority. For O'Reilly, the rights, care and protection of young people and their need to have a voice were again the paramount issues:

> The Lake Alice disclosures serve to remind us of the need to monitor the placement and care of children who are unable to live with their families.

> Such children are a high risk group and society must be ever-vigilant in protecting them from institutional abuse. Disturbing features of the Lake Alice disclosures are that no-one seems to have listened to the young people, nor taken their complaints seriously. If they complained about their conditions of treatment they were exposed to further punishment.

New Zealand Law and UNCROC

A custody case was argued between the grandparents and parents of three children. The parents had separated and left the Exclusive Brethren community they had previously lived in. The children stayed in the community in the care of their grandparents. The parents were later reconciled and sought to have the children returned to their custody. A Family Court decision in favour of the parents was contested by the grandparents in the High Court on appeal. Several Articles of the Convention were cited by counsel for the parents, who argued that the children had a right to access to education, information and freedom of association, which was unlikely to be available if they remained within the Exclusive Brethren community. The Court also considered the best interests of the children after considering psychological evidence of their attachment to their parents, notwithstanding their wish to remain with their grandparents in the community. The Judge found that:

> Views held by the Exclusive Brethren Fellowship are incompatible with the principles formulated in the United Nations Convention on the Rights of the Child, which reflect the generally accepted standard of society in New Zealand (Maxwell, 1996).

This case was one of several cited by Gabrielle Maxwell for the Office to illustrate how UNCROC had started to influence New Zealand court cases involving children. These included cases involving immigrants and others when issues of State versus parental custody were involved. In September 1994, Judge Inglis considered an application in the Family Court by parents for the return of their children who had been in the custody of the Director-General of Social Welfare. Argument for the parents was advanced on the basis of Articles 3 and 9 of the Convention. Judge von Dadelszen considered a similar case in November 1994 and, in making the judgement, referred to several Articles of the Convention, noting in particular that the relevant UN instruments were

> … in a sense part of this country's judicial structure, in that individual subjects to New Zealand jurisdiction have direct right of recourse to it. A failure to give practical effect to international instruments to which New Zealand is a party may attract criticism.

Judge Dadelszen later considered another custody case where a mother was arguing for the return of her child to her care. In making a judgment for the child to remain in the care of the Director-General, but with a specific access arrangement, she found that 'such an approach is in sympathy with Article 9.3 of the UN Convention'. Maxwell concluded that cases such as these illustrated that the Court needed to consider the rights of the child for contact with parents against 'the over-riding principle of the best interests of the child in a more general sense'.

Care and Protection

The Act was amended in 1994 to state clearly that the child's welfare should be the paramount consideration in decisions affecting children. The change, embracing the 'paramountcy principle', was welcomed by O'Reilly, who was outspoken when issues arose likely to affect the care and protection of children. CYPFS had 'inappropriately raised the thresholds before intervention occurs and services are provided to children and families', he declared in 1996. He had 'real concerns' about 'interface issues' between CYPFS and the Courts. The Courts interpreted the law, but the Service seemed to have a view that they were 'misinterpreting the Act':

> That notion should be soundly rejected. I conclude that the Service, because of inadequate resourcing, sometimes adopts a narrow and incorrect interpretation of a child deemed to be in need of care and protection in terms of Section 14 of the Act (Annual Report, 1996).

A paper to the Minister repeated many of these concerns, but drew attention to the impact O'Reilly claimed poverty was having on many New Zealand families and its link to care and protection services. The Office was committed to children having a safe and caring environment, but this could not occur without 'some re-alignment of resources' (1996 Briefing Paper). He identified 'considerable public concern about the economic well-being of a proportion of New Zealand families', elaborated on in the 1994 report of the New Zealand Council of Christian Services, *Child Poverty in Aoteoroa/New Zealand*. Variations in the living standard of families was increasingly evident. Significant changes linked to 'cost saving measures' had reduced funding provided by the State for the well-being of families, both directly in the form of benefits and indirectly in the provision of core services. But 'the economic under-base of care and protection is not a charge upon the nation but a form of investment. In the long-term, investment in the interests of children is sound economics' (1996 Briefing Paper).

The impact he claimed poverty was having on children was stated even more explicitly when he pointed out that it was the International Year for the Eradication of Poverty (Annual Report, 1996). He had contributed to that theme by giving papers, but acknowledged that New Zealanders found the concept of poverty a 'difficult one to accept, [however,] I see clear evidence of poverty in the high-risk families', who

were also likely to be disadvantaged in respect of health, education, housing, and to be low-income and solo parents usually receiving benefits.

He noted in 1997 that care and protection notifications to the Service had exceeded 23,000, and repeated his claim that the threshold for intervention had become too high. In 'the enthusiasm to keep families together, children are being placed back into dangerous situations' (Annual Report, 1997). Many families did not have the resources to keep children safe, let alone promote their welfare and realise their potential. The criteria for providing support services were 'too severe', and evidence clearly indicated that many community workers did not refer cases to the Service. A 'comprehensive reconsideration of the role of the State, and more particularly, the role of CYPFS in care and protection matters' was therefore needed. According to O'Reilly, this could be achieved by a fully representative working party to examine the 'ideological issue of State responsibility, and review and report on resourcing needs and standards of service delivery'.

In a paper to a Children's Rights Conference in Brisbane (1997), he described as 'paradoxical' the effect of a TV campaign by the Service, 'Breaking the Cycle', aimed at raising awareness about abuse. This had probably led to an increase in public notifications at a time of financial constraints, when the criteria for investigating complaints was narrowing. Without sufficient resources, he claimed, 'the interpretation of minimum intervention is likely to be biased to suit departmental shortages, rather than the demands of the child's situation'. A range of negative consequences likely to follow was identified, including inadequate processing when abuse was notified, FGC plans being less adequately funded and monitored, and services after hours and during public holidays contracting in ways potentially dangerous to children.

Care and Protection Resource Panels

The Office continued its statutory obligation of monitoring and reviewing the work of the panels. The Senior Advisory Officer attended two regional hui organised by CYPFS during 1995, and a bi-monthly newsletter helped maintain communication between the Office and panels. A handbook for panel members which Office staff contributed significantly to was well received. However, despite these positive aspects, O'Reilly was again forthright in his criticism. The Service had 'acknowledged shortcomings' in providing advice and support for panels, but it

> … has not consistently met its statutory obligations to consult with panels during investigations and before Family Group Conferences. I will continue to monitor compliance and report to the Service on it. I will also continue to urge managers in the service and panel members themselves to ensure that their membership is skilled and has a broad knowledge base in order to provide the multi-disciplinary and cultural input into care and protection intended by the Act (Annual Report, 1995).

He described as 'disappointing' the number of panels sending annual reports to the Office, and speculated it could mean they no longer knew that the Service had authorised panels to provide him with the reports. But it could also mean that a significant number of panels might have failed to meet their legal obligation to provide the Director-General of Social Welfare with an annual report.

However, a year later O'Reilly acknowledged that the situation had improved. The Office was now receiving annual reports from panels and was monitoring the main areas of concern. These were, in order of priority: heavy workload and high stress levels of social workers, lack of residential care facilities, CYPFS staff shortages, unacceptable rates of absconding from CYPFS residences, lack of training for panel members, delays in allocation of CYPFS cases and high turnover of CYPFS staff.

Interfacing Issues between Care and Protection and the Courts

In 1996 O'Reilly drew to the Minister's attention that the principal judges of the Family and Youth Courts had expressed concern to him that the interface between the courts and the care and protection division of CYPFS had been 'diminishing in quality' (1996 Briefing Paper). They felt that matters that the courts decided had a bearing on a child's need for care and protection or best interests were not being adequately responded to when referred to CYPFS. This included the time-frame for providing essential reports, and in some instances the quality of information provided in reports. There were also concerns about a 'growing disparity' between what the courts regarded as grounds for a child needing care and protection, and the 'rather more narrow interpretations' being made by the Service when the Court made referrals to it. If these perceptions were accurate in a considerable number of cases, his view as Commissioner would have to be that CYPFS was 'inadequately discharging its role as a servant of the Court'. This would, O'Reilly concluded, 'intensify the impression that the Service's resources are no longer adequate to the standard of service it is obliged to provide'.

The Family Court

Other aspects of the Family Court's operation caught O'Reilly's critical eye. He acknowledged in his 1995 annual report, that it had 'acted as a catalyst for inter-disciplinary collaboration and a multi-disciplinary approach' and had motivated family lawyers. But expectations had been high, and 'unfortunately the energy and commitment' to the Court's development 'has not been sustained'. Negative outcomes for children had resulted, including delays in appointing counsel for the child, and court registrars placing caps on fees and limiting time allocations.

O'Reilly had developed a particular interest in the functions and training of counsel for the child because he saw it as such a pivotal role in guardianship, custody,

access and care and protection. He collaborated with the Children's Issues Centre of the University of Otago, and engaged Dr David Geddes to review relevant literature and prepare papers on topics such as how to interview children, the competency of children (including their memory), effects on them of custody disputes, divorce and domestic violence, causes of physical and sexual child abuse, and repressed memory syndrome. He also collaborated with the Principal Family Court Judge on how this material could be accessed by the profession and for training programmes.

Submissions

Commenting on aspects of the justice system formed the basis of several of the many submissions the Office continued to make to Parliamentary Select Committees. Three submissions were made, for example, during the drafting stage of the Domestic Violence Bill, and a formal submission then made to the Committee, drawing its attention, in particular,to the importance of recognising children's special needs. These included broadening the definition of people a child needed protection from, beyond those they had a 'domestic relationship' with, to any persons who regularly had access to the household. Strengthening provisions on the right of the child to be heard was amongst several other recommendations.

Research

The absence of comprehensive research into the outcomes of the 1989 Act, particularly with regard to care and protection, remained a concern, and O'Reilly referred to it again in a paper to an Asia-Pacific Conference on Children's Rights (1997). He claimed that while New Zealand had made a 'unique contribution' to care and protection systems, without research 'one could not say with confidence that outcomes are in fact any better than under the previous legislation'. Research had focused on issues of process evaluation rather than on outcomes for children and families, and seven years after the passing of the Act there had still been 'no significant research on outcomes'. This was, perhaps, rather too harsh a judgement. Despite the disappointments, some useful work had been achieved, including that by Robertson and Maxwell referred to earlier.

During 1994–5 the research team, and researchers from DSW's Social Policy Agency, put considerable effort into developing a proposal for the major study of the outcomes of the Act regarded as essential. It was costed at approximately $3m over five years. But Maxwell suggested that without it, 'the millions of dollars we spend in providing services for the protection of children, and the prevention of damage to them through the social welfare system remains unevaluated'. However, nothing came of this proposal.

Other Matters

O'Reilly's legal background and wide interests led him to become involved in numerous issues. Privacy concerns was one of these. 'Almost without exception', he remarked in his 1995 Annual Report, at every public forum or consultation with an agency he had been involved in, he had received complaints about how the Privacy Act 1993 was hindering the work of the agency. Some workers and agencies 'inappropriately excuse inaction by calling in aid some perceived privacy principle', but in his view the Act did not inhibit practice as much as some practitioners thought, as long as it was used sensibly. One option would be to incorporate the paramountcy principle in the Act, so that all decisions regarding disclosure would have the best interests of the child as the main consideration.

At a 1995 forum on privacy issues O'Reilly suggested there was an unnecessary debate between the protagonists of perceived parental rights and children's rights. Both sides had taken, he claimed, a one-dimension approach, whereas a distinction between each kind of right was needed with many issues. However, the safety and health of the child at risk needed to be focused on as the most important consideration when care and protection issues were raised, not just the right to privacy. Section 16 of the 1989 Act made it clear that anyone who disclosed information about abuse or suspected abuse of a child to statutory authorities was 'amply protected', although feedback from the community suggested this fact was not as well known as it should be. Protection for those reporting abuse also came from Section 7 of the Privacy Act 1993.

UNCROC

'I have continued to base my work on the principles set out in the UN Convention on the Rights of the Child', O'Reilly noted in his 1995 annual report. The Convention could be used as an 'advocacy tool' for children's rights, as a guide in examining legislation, policy and practice to see where compliance could be improved and the rights and welfare of children advanced. He described some vocal individuals and groups as 'quite mischievous in representing the Convention as anti-family and anti-parent,' and as having 'quite deliberately misled and misinformed some sections of the community'. Such critics should be 'vigorously pursued' by all advocates for children. The Convention explicitly recognised the child's right to a family environment, family relations and parental guidance. There was no fundamental conflict between children's rights and family rights, and the Convention 'reinforced guardianship and co-parenting responsibilities described in New Zealand statutory law'.

Not surprisingly therefore, the Convention's influence remained evident in the work of the Office throughout O'Reilly's term. In a paper to the Early Childhood Council (1996) he suggested that New Zealand was slowly accepting a rights perspective for children, and the Convention represented a 'major leap forward in

standard setting on children's issues'. This particularly applied to its 'lynch pin', Article 12, which directed adults to identify the wishes of the child and then give weight to them as was appropriate, having regard for their age and maturity.

In the 1996 Briefing Paper to the Minister he took a critical stance on a Ministry of Youth Affair's Report to the United Nations reviewing the position of children in New Zealand during the previous five years. He suggested that the Report had emphasised aspects of progress, such as the abolition of corporal punishment in schools, rather than surveying the general situation of children and policies relating to their interests and well-being. This omission had been remedied by an independent report by a committee of New Zealand NGOs entitled *Action for Children in Aoteoroa*. While the Office had contributed to both reports, the latter, he claimed approvingly, had identified the areas which remained inconsistent with Convention obligations. It had been 'particularly critical of New Zealand's response … and identified rising child poverty, youth suicide, the reduction of government services through restructuring and fiscal policies, and the disadvantaged position of Māori, as cause for serious concern'. He pointed out that New Zealand would be required to furnish its second report in 2000 and attached a list of 53 questions, requiring considerable further information in areas such as civil rights, family and alternative care, health, education, and care and protection, which the UN Committee had asked New Zealand to provide in response to the first report.

O'Reilly also drew attention to New Zealand's obligations following the 1990 World Summit for Children. The Summit had strongly endorsed the Convention and the world leaders present had agreed to be guided by the principle of 'First Call' for children, meaning that children's essential needs should be given priority in the allocation of resources, 'in bad times as well as good times, at national and international as well as at family levels'. He had expressed concern to both the DSW and Ministry of Youth Affairs about New Zealand's failure to draft a plan of action. Commitment to this had not been given priority, the consultative process had been prolonged, and the reporting back obligation delayed.

The UN Committee had been concerned about what appeared to be a 'somewhat fragmented' New Zealand approach to the rights of the child, with no global policy or plan of action incorporating the Convention's principles and all the areas it covered. It noted 'with concern', the lack of conformity of New Zealand laws with the definition of the child under the Convention, particularly with regard to the minimum age for charging a child with serious offences, and access to employment. Ten other areas of concern had been identified, ranging from the need for the State to take ultimate responsibility for services to children rather than relying too much on NGOs, the high rate of youth suicide, and the absence of effective co-ordination between different government departments competent in areas covered by the Convention.

Despite these reservations, O'Reilly acknowledged some positive features in UNCROC's response to New Zealand's compliance with the Convention (Annual Report, 1997). The Committee had welcomed the 1995 Domestic Violence Act, increased emphasis on the monitoring of the impact on children of proposed legislation

and policies affecting children, and the range of support services for children with disabilities. The inclusion of young people aged 16 years and older in the age discrimination provisions of the 1993 Human Rights Act, and the convening of a "Youth Parliament" were also noted positively.

The Education Sector

The school sector is 'rapidly becoming the focus of work of this Office and I estimate that about one third of the Office ouputs relate to this area', O'Reilly noted in his 1995 annual report. In a letter to the Minister of Justice in July 1996 he said education issues were providing 'the greatest challenges for this Office'.

School Violence and Bullying

O'Reilly identified school bullying as a 'major concern' requiring the Office's involvement (Annual Report, 1995). In 1998, when six formal complaints were received by parents or guardians of students about violence at a secondary school, O'Reilly's investigation identified 'a culture of violence' (O'Reilly, 1998). Many pupils appeared to come from homes where corporal punishment was acceptable and where violence such as threats and intimidation was used to resolve conflict. Nevertheless, the Trust Board and Board of Trustees had to take responsibility. Many students had been the victims of serious criminal and verbal assaults, intimidation, harassment, extortion and abuses of power by prefects. Many who escaped physical abuse experienced fear, in some cases causing them to hide or run away. O'Reilly concluded that the school was therefore not a safe physical or emotional environment, and he found substance in all of the complaints made, media reports of violence and a critical Education Review Office (ERO) report.

However, a follow-up investigation showed that his recommendations had been significantly addressed. 'Improving Behaviour' surveys had been carried out by the Special Education Service (SES) followed by appropriate action and workshops conducted at all levels by SES staff. There had been an effective response to bullying and other abusive behaviour, with outside speakers, including old boys, involved, and new policies in health, safety and sexual harassment implemented. Nevertheless, effective complaint procedures still needed to be implemented and strategies for greater parental and community involvement developed.

Upon investigating complaints received from several parents at another college, O'Reilly found there had been serious acts of violence over several years (Annual Report, 1995). He made recommendations relating to the management of hostels, extension of counselling services, development of a complaints system and methods of selecting prefects. He noted that the problems encountered at the college were by no means unique and his report triggered a nation-wide response indicating that the problem was widespread. 'Many schools', he later told an international conference

on preventing child abuse and neglect, had acted as a result of the report to 're-examine their anti-violence policies as well as their forms of leadership' (O'Reilly, 1997).

A staff member at a secondary school was found to have sexually assaulted a large number of female pupils over two decades (Annual Report, 1997). The board approached the Commissioner to conduct a review of policies and practices to keep students safe. This investigation also taxed the resources of the Office whose staff, collaboratively with ERO, the Human Rights Commission, SES and CYPFS, circulated questionnaires to the school and community, held public meetings and interviewed witnesses.

Arising from such investigations and other evidence the Office began to address the school bullying and violence problem on several fronts. O'Reilly convened a meeting in 1996 with representatives from the ERO, Police, Crime Prevention Unit and SES to review resource kits for schools on bullying and to develop other strategies. The meeting agreed that the Ministry of Education needed to be involved, and O'Reilly wrote to the Acting Secretary for Education, Lyall Perris, suggesting it develop guidelines for schools on bullying and a campaign to raise awareness about the problem. Perris replied that several initiatives to combat bullying were under way, but the Ministry would be keen to work with the Office to develop further support for schools.

The Office researched Forms 1 and 2 (Years 7 and 8) children in eight schools to explore bullying and other forms of violence they had experienced and its impact. Violence at the hands of other children was found to be the most common direct experience of physical violence at school. Forty-nine per cent of the children reported 'being punched, kicked, beaten or hit by children. Twenty-three per cent reported being in a physical fight with children' (Maxwell and Janis Carroll-Lind 1997).

After extensive consultation with education agencies, schools and pupils the Office published the *Students Rights at School Information Kit* (Jamison and Wood, 1995). This included information for developing a code of rights for students and schools, relating to bullying and other issues involving the use of force, as well as suspensions and expulsions, discipline and fees. The kit was launched at the Beehive by the Minister of Youth Affairs, Roger McClay, with students from Titahi Bay North School performing two skits illustrating how students rights can be infringed and what could be done about it.

Suspensions and Expulsions

Mass suspensions of pupils at Cambridge High School and Mount Maunganui College sparked considerable media attention during O'Reilly's term. However, these were just two more visible examples of a rapidly growing problem now generating many complaints from the school sector and much concern in the Office.

In a submission to an inquiry into children at risk (1995), O'Reilly included a section on suspensions and expulsions, pointing out that the Education Act only

allowed these where there had been gross misconduct, continual disobedience or behaviour likely to cause serious harm to the student or others. But he found boards differed in their interpretation of the Act; what was considered gross misconduct differed from school to school. Schools, students and families needed further information on how to interpret the Act. Most cases he dealt with involved questions about whether correct procedures had been followed, with 'a tendency for the suspension procedures to be weighted against the student and students and their families not aware of their rights'. That the Act did not give a student the right to be heard at a board meeting when suspension was being considered caused him particular concern, because it appeared to breach not only the Convention but the New Zealand Bill of Rights. He was

> … not convinced that suspension and expulsion are only being used in extreme cases. [They are] heavy penalties for wrong-doing. The consequences for the student can be extremely detrimental and the impact on their future may be akin to receiving a criminal conviction in terms of how it may limit their opportunities. Alternative forms of discipline should be encouraged so that suspension or expulsion is indeed a "last resort" remedy to be used only when all other options have been exhausted.

O'Reilly continued to view the trend 'most seriously' in his 1996 annual report and, as usual, did not pull his punches. He noted that the Office had received reports from CYPFS staff, Child and Family Support agencies, parents and foster parents that suspensions and expulsions were being used as a form of 'socio-economic and even cultural purging of school rolls', or as 'behavioural cleansing' of the roll. The effect on foster families was identified as an area of particular concern, because they were finding it increasingly difficult to enrol their children, 'many reporting that they are put on notice that misconduct will result in suspension or expulsion'. Statistics showing that 40 per cent of suspensions and expulsions were of Maori pupils also disturbed O'Reilly, and he raised the possibility that the official figures were probably worse because of the continuing practice of "Kiwi" (not officially recorded) suspensions.

When invited to comment on draft guidelines the Ministry had developed, O'Reilly recommended including a clear statement that suspension should only be used as a last resort, alternatives should be explored and included, an information sheet for students developed, the independent right of the student to receive information and speak on his or her own behalf acknowledged, and the use of support people or advocates for students and families in suspension meetings encouraged.

A 36-page briefing paper on the steps parents and students could take if they were dissatisfied with the actions of a principal or board in 'illegally, unreasonably or unfairly' refusing to enrol a student, or suspending or excluding a student, was presented to the Minister of Education in April 1997. It covered the legal rights of young people to schooling, both in New Zealand law and according to the Convention, statistical information on the number of students being excluded

and its effects, existing avenues for appealing a board's decision such as the Ombudsman and Human Rights Commission, and the inadequacy of existing review procedures.

The Office also continued to support many individual students facing expulsion from school, with regular letters written by the Advisory Officer, Andrea Jamison, to principals and boards when problems arose. But in 1997, O'Reilly was still expressing his concern that despite an Education and Science Select Committee's 1995 recommendation that exclusion of students should be a 'last resort', and Ministry of Education guidelines urging principals and boards to explore alternatives, the number of excluded students 'continues to grow inexorably, with the serious over-representation of Māori students a particular concern'.

Communications from School Pupils

These remained relatively rare, as they did from children and young people generally. But when received, they were often a delight and perhaps a useful reminder about the Office's ultimate purpose.

> Dear Miss Wood
> I would really appreciate you sending me the kit about childrens rights in the classroom. Is it free and do I have to send it back? Some things have been happening and I just wondered about it. I would be very thankful.
>
> Benie
>
> p.s. is a teacher allowed to keep you in at breaks and stop you from eating lunch?

> Dear Commissioner
> We want to learn about baby-sitters. Our class has some questions that we would like to ask you. Please can you kindly help us. Do you have to pay a baby-sitter? How much? Who is responsible if something happens to a baby when the baby-sitter is there? How many children is one baby-sitter allowed to look after? How old do you have to be to baby-sit children? How old do you have to be to be left alone in the house? How do people learn to be baby-sitters? How long can a child be left alone in the house?
>
> Room 4

Youth Suicide

The high rate of youth suicide was another serious concern during the 1990s and it was not surprising that the Office became involved. O'Reilly investigated the suicide

of two young friends attending the same secondary school (Annual Report, 1996). His report to the Ministry of Education and SES led to a comprehensive review of school-related suicides, and guidelines being developed by the Ministry and National Advisory Committee on Health and Disability to assist schools with the prevention, recognition and management of young people at risk. Although no longer with the Office, Ian Hassall also continued to take an interest in youth suicide, publishing an article 'Why Are So Many Young People Killing Themselves?' in *Butterworth's Family Law Journal* (1997).

School Safety

In 1996 the Office worked with CYPFS and several education agencies to explore ways of developing a 'school safety web', a concept designed to co-ordinate policies associated with student safety, violence and suicide. It involved a child/student safety team, a procedure for making complaints or suggestions at school, the appointment of student advocates and school safety advisors, or contact people. The concept exemplified one of the distinctive features of O'Reilly's term, his enthusiasm for developing partnerships or collaborative projects:

> We need to promote the concept of partnerships between state and community, the concept of strategic partners between agencies serving children and families and partnerships between the home, the school and the wider community. … We need triangular relationships, for example teacher, parent and young person. At a broader basis we need triangles of support, for example, school, family and wider community. I have been urging an extended pastoral role for schools. I suggest that the school site is now the pivotal site for the delivery of social work (O'Reilly, 1996).

O'Reilly enthusiastically promoted the concept of school social workers, believing that services and support for young people was not offered adequately by other agencies. He regarded schools as providing the best and sometimes only help for many 'at risk' pupils, and by default they needed to assume an extended pastoral, care and protection role. He became involved in the establishment and monitoring of a pilot project with three schools on Auckland's North Shore. Based on the principle of early intervention, the programme involved professionally qualified social workers working on a collaborative basis with families, schools and communities. He advocated strongly for the concept in the Office's submission to the *Inquiry into Children in Education at Risk through Truancy and Behaviour Problems* referred to earlier. In a report to the Minister of Social Welfare (O'Reilly, 1996) he urged the Government to approve the concept of specially-trained school social workers to achieve nation-wide coverage of primary, intermediate and area schools over a 5–10-year period, and then consider adapting the model for secondary schools.

South Canterbury and the Focus on Children Project

Concern amongst a group of South Canterbury teachers, service providers and funders that many children in local schools were not able to access the services they needed, led them to form a management committee to address the problem. The Office agreed to work with the group to obtain teachers' assessments of primary children's needs, the views of families and parents, and develop a suitable action plan. Preliminary results showed 6.8 per cent of children sampled were not having their needs met in the existing system, with 2 per cent rated as very high need. The nature of these needs was identified and analysed and a separate report written on the particular needs of Maori children in South Canterbury (Maxwell and Shepherd, 1997).

Drug and Alcohol Use in Schools

O'Reilly devoted an enormous amount of his own time and considerable Office resources to this issue, which arose from his examination of why some school boards suspended and expelled students (O'Reilly, 1997). This indicated that involvement in drugs often lay behind their decisions. But O'Reilly's own investigation taught him that such young people 'endure multiple and overlapping disadvantage', with drug use only one of the vulnerable areas in their life. Some good work was being done in the drug and education area, but he concluded that the response to the issue was 'significantly inadequate'.

In 1997, Principal Youth Court Judge Carruthers asked him what he thought the most appropriate way was to detect and deal with drug use in schools. In his reply, which he also forwarded to National Police Headquarters, he acknowledged that use was a major concern for schools. But if Boards adopted a 'Police role' it might deter pupils from approaching school counsellors. And if schools had a policy emphasising detection, prosecution and suspension, it was 'hardly an encouragement to a young person to raise the issue with a counsellor'. With respect to searches, he suggested that 'the school does not have an inherent right to search'. The question that needed to be asked at each stage was – would adults find this policy acceptable? With high use in the community generally, 'the double standard is not lost on the child or young person'.

In typically forthright fashion he continued that punishments of indefinite suspensions and expulsions demonstrated that schools were 'more punitive than the Criminal Justice System or the Youth Justice System'. Moreover, issues of 'double jeopardy' arose, in that a young person could be punished by the school, the Youth Justice System and by parents. These views, together with accounts of the effects of exclusion from school on students, the limits of school powers with respect to random drug testing, compulsory searches, sniffer dogs in schools or on school buses, school questioning of students and police involvement, were set out in a subsequent Discussion Paper issued by the Office.

O'Reilly's approach to students – apparently more sympathetic than some school authorities' approach – did not always find official favour. He wrote to the Minister of Education, Wyatt Creech, in 1997 regarding initiatives he was promoting for drug education programmes in schools. Creech's reply referred to the 'deep anxiety' many parents felt about their children being exposed to drugs at school. Principals and boards sometimes had no choice but to take what they realised was serious action against individuals and 'many have expressed concern to me about comments you have made at these difficult moments. They have felt they undermine their authority.'

Undeterred as usual, O'Reilly wrote again to Creech about his drug education proposal. The Minister replied that he had noted the proposals and was keen to see action taken, but he was 'less than convinced that your proposal is the best way of dealing with the problem. I fear it could actually make the matter worse'. However, O'Reilly persisted, co-hosting a seminar with the New Zealand Drug Foundation in August 1997 to discuss the Ministry of Education's new funding for drug education in schools. This was attended by representatives from agencies, and the funders and providers of drug and alcohol education services to young people. A senior lecturer in health education who attended wrote to O'Reilly expressing appreciation for his 'superb facilitation', which had enabled important issues to be raised 'in an objective and non-judgmental environment'.

Special Education

The Commissioner received a growing number of letters from psychologists, school principals and parents expressing concern that the provision of special education services for children was inadequate in many areas. He wrote to the Minister, Dr Lockwood Smith, in November 1995 to draw attention to the issues raised, acknowledged that work towards a Special Education 2000 policy was being developed, but suggested that the current situation appeared to be at crisis point, with many pupils not able to wait until then.

Meeting the educational needs of children with behavioural difficulties was the main focus of several addresses O'Reilly gave to Principal's Associations. Motivated by complaints received, and with staff assistance, he wrote a substantial *Report of the Commissioner for Children on Special Education* (1996) for those developing policy in the area. Problems identified included insufficient teacher aide hours, the absence of assistance for some pupils, regional discrepancies, possible links between pupils needing assistance for behavioural difficulties and school suspensions, and lack of places in facilities for children requiring residential schooling. The needs for a greater focus on children's rights and more research and monitoring to produce better planning and communication with parents and caregivers of children with special needs was also identified.

No Hitting of Children

The strong 'no hitting' advocacy continued during Laurie O'Reilly's term. Beth Wood put considerable effort into writing materials which encouraged alternatives to hitting as a disciplinary method. These included a book for pre-schoolers, *Hey! We Don't Hit Anybody Here*, which was published in Māori and English, and the pamphlets *Setting the Scene to Encourage Good behaviour, Some Suggestions on How to Help us Behave*, and *Keep One Step Ahead.* A teaching resource kit, *Living in a No-hitting Family: Children are Family Members* was also published.

The no-hitting policy continued to provoke strong criticism from some correspondents as 'anti-parent' or going against biblical directions. This saddened O'Reilly, because he viewed such attitudes as reflecting the extent to which there was continuing acceptance of the physical punishment of children. In his responses and speeches he constantly pointed out to critics the work of the Office to promote alternative forms of discipline.

Fathers

> My favourite day is Sunday because me and Dad get to spend all day together. I love my Dad. He's the best.
>
> I don't always live with my Dad, I'm usually living with my Mum, but whenever he sees me he's really happy and that's what I like to know.

These quotes are from *Children's Views on Fathering*, part of the Fathers Who Care: Partners in Parenting project initiated by O'Reilly. This project arose from his concern that the trend towards single-parent families meant that many children were growing up without a father (Hendricks, 1997). At an International Year of the Family Conference he found many countries were supporting programmes to promote and enhance the role of fathers in families, paralleling the movement for greater equity for women in homes and workplaces. There was a danger, he suggested in 1995, that strategies to prevent violence and child abuse sometimes had negative effects on fathers which could undermine the development of a positive role for them in the family. He advocated a 'partnership' concept to reflect obligations recognised in legislation and the UN Convention that parenting was a joint responsibility (Annual Report, 1995). 'After nearly three years as Commissioner', he wrote in 1997, 'I have come to the conclusion that the legal profession has poorly served children in many cases by discouraging fathers from pursuing genuine co-parenting arrangements' (O'Reilly, 1997).

Launched in June 1997, the Fathers Who Care project received significant sponsorship from the Save the Children Fund. Fourteen focus groups, led by Rae Julian and including Māori and Pacific Island groups, discussed fathering in Wellington, Christchurch and Auckland. Subsequent publications included *An*

Overview of Parenting Programmes for Fathers (Brickell, 1998). The editors of *Perspectives on Fathering* paid a particular tribute to O'Reilly in their introduction. (Birks and Callister, 1999). He had 'raised the profile of fathers and children while Commissioner of Children from September 1994 to January 1998. Laurie was committed to helping children and believed strongly in the importance of fathering. It is largely due to his efforts that the Fathering the Future project came into being.' Professor Ian Pool and Sarah Hillcoat-Nalletamby titled their paper 'The Legacy of Laurie O'Reilly', acknowledging that it had been inspired in part by his work and 'all that he stood for, and more importantly, to our nation's children, for whom he was an eloquent advocate'.

Child Mortality and Health

Successive Commissioners urged that a comprehensive national child mortality review system was needed because some tragic and violent deaths did not get reviewed by any particular agency. This meant that insights that might contribute to an effective child protection system were lost. Hassall and Maxwell had begun an investigation of the topic and O'Reilly, assisted by Dr David Geddes, continued to work on it. Recommending to the Minister that he sponsor a Bill to establish a national system, O'Reilly commented that 'Everyone has a piece of the jigsaw (about preventing child deaths) but no-one has the full picture'. He also urged the introduction of a national system in his 1996 Briefing Paper and in correspondence to the Associate Minister of Health. However, no further progress was made during his term.

A number of submissions on other health-related matters included those on the health sector's role in preventing child abuse (1995) and a code of consumer rights for health and disability services in New Zealand (1996). The Office played a role with other agencies in the development of Kidsafe Week, aimed at focusing attention on the number and seriousness of 'accidents' involving the home, roads and playgrounds.

Mental Health

The inadequacy of mental health services for young people also came to the attention of the Office. Maxwell wrote to the Health Department's Director of Mental Health in 1995 expressing concern, also identified by the New Zealand Psychological Society, over 'fragmented, narrowly focused and inadequate' provisions for children and families in the sector. Later in the year, she wrote again, drawing attention to the continuing absence of adequate inpatient and adolescent and child psychiatric services, substance abuse counselling, and assessment programmes for children and young people: 'In fact right across the spectrum of mental health there are important gaps'. In a letter to the Associate Minister of Health in 1997 O'Reilly repeated these concerns, pointing out that the problems had now been identified in several reports.

The Office

Staff

Beth Wood left the Office in January 1996 to return to social work practice. An article in *Children* (March, 1996) commented that the work she had done on the Office's educational campaign to promote alternative forms of discipline to physical punishment, and her support to the Care and Protection Resource Panels, had been of particular note. Lima Paget, who had become the Office's finance manager, also left early in 1996.

Independence for the Office

O'Reilly continued advocating for greater independence for the Office, frequently referring in his speeches and reports to the Mason Report's support for the idea, and the possible negative implications of his having to negotiate an annual performance agreement with the Minister, on the grounds that the process might be used to influence his work.

This latter possibility also concerned UNCROC. 'How is the independence of the Commissioner for Children assured when the budget comes from one of the government department he monitors?', was one of a series of questions it presented to the Government, whose response was that independence was guaranteed in the performance agreement.

O'Reilly drew a connection between what he viewed as the under-funding of CYPS, his own role and the independence of the Office in his 1996 annual report. He pointed out that he was required on the one hand to monitor government policy and services, and was increasingly identifying cases 'where I believe social work practice has not been of an appropriate standard because of resourcing issues'. But this created tension with the Service, because his comments were viewed as criticism which could 'further undermine public confidence' and as 'interference in management'. Difficulties affecting the Service also entailed increasing demands on the Office and a need for more resources. But his submissions on funding were processed by senior officials of the DSW, who in turn reported to the Minister he was required to enter into a performance agreement with and consult on outputs. Tension had been 'most acute' when he had needed to publicly raise questions about the curtailment or standard of services.

He acknowledged that there had generally been a good level of co-operation between his Office and CYPS, and his independence had been respected at ministerial level. Nevertheless, there was a 'growing body of opinion that public confidence in the Office would be enhanced' if it was given greater autonomy and not linked so strongly just with the welfare sector. Repeating some of these points in a 1996 briefing paper to the Minister, he added that the Norwegian Children's Ombudsman, created in 1981, had greater autonomy and considerably wider powers than his own, and she

had strongly recommended that comparable offices elsewhere should be similarly empowered to enable them to fulfil their responsibilities effectively.

In 1997, New Zealand First MP Anne Batten introduced a Private Member's Bill into Parliament to give the Commissioner greater independence. O'Reilly's briefing notes on the Bill summarised the following points:

- The framers of the 1989 Act had expressed the view that the Commissioner would act independently and be free of political pressure or interference.
- Under the existing arrangement, 'if the Commissioner speaks up fearlessly for children there will always be a tension with some government departments providing services for children and young people'.
- International evidence, including a report from UNICEF, confirmed that agencies established to promote the rights and interests of children should be independent statutory bodies. UNCROC's observations, included its view that consideration be given to increasing the Office's autonomy.
- More than 60% of complaints and a larger percentage of enquiries dealt with by the Commissioner related to other government or non-government agencies, making the statutory link with the DSW inappropriate.
- It was anomalous that policy advice given by the Commissioner to Ministers other than the Minister of Social Welfare, and to officials in other government departments, should be subject to appraisal by the Minister of Social Welfare.
- The Commissioner's investigative functions required a role similar to that of Norway's Ombudsman for Children, and the same independent status should exist.

The Bill was defeated by 68 votes to 50. But O'Reilly commented that it had promoted thoughtful debate on the issue (O'Reilly, 1997). One result had been an acknowledgement by the Minister of Social Welfare, Roger Sowry, that it might be timely to review the status and functions of the Commissioner. The issue was raised again during the 'Way Forward after Geneva' forum organised by the Office and held at the Ellerslie Convention Centre in Auckland in February 1997. A workshop on 'Independence of the Office of the Commissioner for Children', convened by Ian Hassall, recommended that to fulfil its functions adequately the Commissioner be established under a new Act separate from the 1989 Act.

Advocating for Children

This notion lay at the heart of most of the activity of successive Commissioners and staff and took many forms. O'Reilly consulted with groups and organisations seeking support for an extensive nation-wide child/youth advocacy scheme operating under the umbrella of the Office. He envisaged developing links with established advocacy groups such as the Auckland Youth Law Project and Community Law Centres to identify advocates and promote the concept, and encouraged services, agencies and schools to have their own designated advocates.

He enthusiastically took up a plan, put forward by John Harward and supported by Judge Carruthers, to trial a pilot scheme for a child advocacy service in Wellington which might later be developed more widely. The concept was also promoted in papers to a range of audiences, such as in 'Look Back – Step Forward: Everyone an Advocate for Children' to the Family Courts Association in 1997, in which O'Reilly urged the legal profession to support the process of consultation initiated by Principal Family Court Judge Mahony on the role of legal representative for the child. In a wide-ranging editorial in *Children* on 'Advocacy for Children' he identified different types of advocacy (systemic, parental, self, peer, etc.), summarising the views of several well-known writers on the topic, and placed it within the context of UNCROC (September 1997).

The Commissioner at Work

A lively description of Laurie O'Reilly at work was provided by Paul Pankhurst in the *North and South* article 'Keeper of our Kids' referred to earlier:

> Laurie O'Reilly is the man with 930,000 children under his wing. A year into the job … he is talking up a storm. He travels further, spends more and speechifies louder than his predecessor. Pushing the public profile of his little office higher than ever before, he also pushes his tiny staff through elastically long working days …. He generates heat and controversy campaigning against the law which lets parents smack their children ….
>
> On a cool winter's afternoon, Laurie O'Reilly is booming away at an intrigued and attentive audience of primary and secondary school principals …. as his voice fills the lecture theatre it's hard not to see this as something like a Ranfurly Shield half-time pep talk …. There is just so much to cover before everyone gets back on the field …. O'Reilly is scattering shot over a wide range of targets connected with child welfare. He starts—inevitably—by introducing himself as a "grass-roots" sort of person …. He is whipping transparencies on and off the overhead projector so fast the Principals can hardly read them. Ideas, topics and buzzwords-like "systems abuse" … are bouncing every which way. He runs through—and this is just a sample—school bullying … a proposal for siting social workers at schools; the anti-smacking campaign (it generates the most "vicious" letters his office receives); the ideology behind the Children, Young Persons and Their Families Act; the importance of the United Nations Convention on the Rights of the Child; the Fa'a Fouina case … gaping holes in state services for the young; his own office's lack of resources … and the need for an educational complaints tribunal …
>
> *North and South*, October 1995.

O'Reilly unquestionably raised the public profile of the Office and became highly regarded for achieving this. The complaints and enquiries function of the Office was

strengthened and greatly expanded, almost to the point that it now dominated advocates' work. In 1996, in an optimistic self-review of his first 18 months in office, he told the Early Childhood Council that there had been a 'marked change in approach' since his appointment. He had 'pledged [to] develop and maintain effective links with grass-roots groups' and felt that he had achieved this, having met with or received 'more than 450 agencies'. He described media interest in the work of the Office as high, constructive and essential to getting the message of child advocacy across.

John Caldwell, Senior Lecturer in Law at Canterbury University, provided a perspective on O'Reilly in his description of him speaking to the Family Law course at the University in 1997, by which time the Commissioner was aware that he had a terminal illness:

> At the beginning of his talk the students were politely attentive and interested … The reasons for the unprecedented success of that lecture almost certainly lay in the raw, transparent commitment of the Commissioner to Children. The students were not hearing of Family Law sieved through an erudite analysis of judgements and statutes … but rather flesh and blood stories of living New Zealand youngsters. They were experiencing a remarkable man's passion for kids. For a number of law students, the subject of Family Law had been transformed from a reasonably interesting optional subject for the LLB degree to an important social cause. They had caught the Laurie O'Reilly vision of an irrational commitment to children (Caldwell, 1997).

In a final personal message O'Reilly acknowledged the

> … outstanding contribution made to the cause of advocacy by my advocates. Trish Grant has demonstrated outstanding leadership qualities and made an immeasurable contribution to the welfare of children. Similarly, Auckland-based advocate Robert Ludbrook has tenaciously applied his immense experience and wisdom in his efforts to improve legislation, policy and practice. I wish to personally acknowledge the loyalty of my Administrative Manager, Pauline Coupland, and my Personal Assistant, Sefulu Sione (*Children*, 1997).

Recognition of his work came from several quarters, including admittance to honorary membership of the Paediatric Society of New Zealand, 'The Laurie O'Reilly Study Award' for staff in the Mental Health Division, and Peace Foundation and Barnardo's Poutama Awards. The second Commissioner's good qualities were, in Robert Ludbrook's view, described 'brilliantly' in the eulogy given at his funeral by Principal Family Court Judge P. D. Mahoney, where the huge attendance was also evidence of his popularity.

> He will be remembered for his fearless advocacy for children because that is what it always was even when it involved criticism of state agencies and others,

> when he saw that children had been let down or failed, sometimes totally. He was criticised by some for tackling too many issues, for speaking out too often. He did not do so lightly or without solid evidence and careful thought. He was not one to cry wolf …. He gave everything he had to his work as Commissioner (1999).

David Oughton, a former Secretary for Justice, was appointed by the Minister, Roger Sowry, to manage the Office during Laurie O'Reilly's illness. Trish Grant had written to Sowry pointing out that as there were no statutory provisions for an Acting Commissioner, the Office was likely to be in a jurisdictional minefield. As a result, Sowry appointed Oughton to manage it for about six months. Both he and Grant had signing authority from O'Reilly to carry on the Commissioner's functions.

Grant points out that Oughton's

> … experience in the public sector was invaluable in managing the financial and legislative accountability aspects of the Office. He was adept also in managing relationships with government departments and Ministers of the Crown. He had a particular energy for social justice type issues and a hands on approach in some case work relating to care and protection and youth justice, education and health. He ably maintained the work of the office in a difficult transition (Interview, 2002).

CHAPTER

4

The Third Commissioner – Roger McClay, 1998–2003

The first two Commissioners had, understandably, shaped their role according to their backgrounds and personalities. Ian Hassall's term had reflected his strong research background and wish to build a solid factual basis for the Office's work, as well as his expertise and wide experience in the health field. Laurie O'Reilly's background as a family court lawyer and advocate, wide community interests and more gregarious personality meant that he advocated issues for children in a much more public way, raising the profile of the Office as a result, and also generating a huge volume of complaints and enquiries. He also directed it more towards organising co-operative projects.

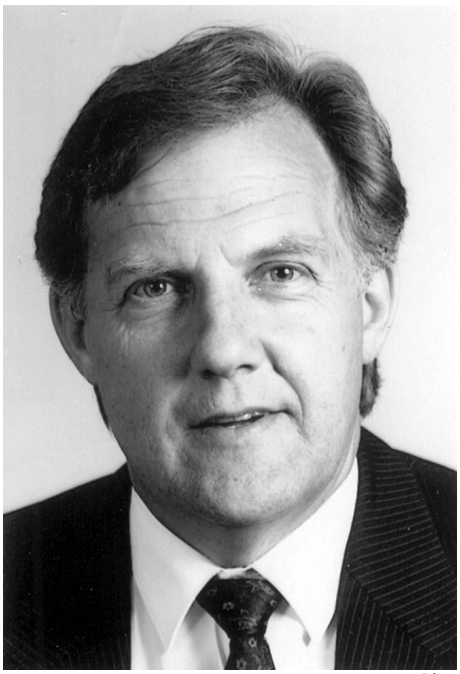
Roger McClay was appointed Commissioner in February 1998, initially for six months, which extended to a full five-year term in July. He brought his own distinctive background and personality to the position. Chairman of the Career Services Rapuara Board at the time, he had worked with children and young people in various contexts all his working life. Interviewed at the time of his appointment, he described how being a primary school teacher and principal had given him the opportunity 'to share his love of sport, music and cultural experience with children' (McFadyen and Taylor, 1998). Politics had also been a passion from an early age, and as a National Member of Parliament from 1981 to 1996 he became immersed in education and welfare policies affecting young people. As Minister of Youth Affairs he became a strong advocate for UNCROC. His Associate Minister portfolios included Education, Pacific Island Affairs and Social Welfare, which had involved working closely with CYPFS, and led to him becoming an enthusiastic supporter of social workers and their role. His 'educational and political backgrounds', Coupland comments, 'brought new strengths to the Office and opened lots of doors'.

Getting Started

McClay describes himself as having been fortunate to have taken over after David Oughton's temporary but effective management of the Office. Nevertheless, he faced a difficult situation. The Office was in a precarious financial and staffing situation, staff resignations meant that only the administrative staff and the senior advocate Trish Grant remained. McClay recalls:

> … when I arrived in this office it was in a somewhat sad situation. Those who were on the staff had been through extremely traumatic times and generally things were at a rather low ebb. The finances of the office had for some years been over-stretched and over-spent. This had caused concern in the minds of those associated with the office …. Other larger agencies were somewhat uncomfortable with how things had been running (Interview, 2002).

McClay moved quickly to maintain effectiveness and re-establish morale. A former colleague recalls that 'one of Roger's strengths was that he brought some healing to the staff at this time'. New appointments, made within a few months, included two new advocates. Cynthia Tarrant had worked as the clinical nurse manager of a hospital children's ward, and Ngaire Shepherd had worked for CYPFS for twelve years. Two part-time temporary advocates – Jude Douglas, with a background in care and protection social work, and John Brickell, in education and personal growth counselling and the 'Fathers Who Care: Partners in Parenting Project' – were appointed. Janet Upton came from the Department of Statistics to fill a new role in the office as Information and Communications Officer, and Necia Hira was appointed as a General Office Assistant.



Hon Roger McClay

The third Commissioner for Children, the Hon. Roger McClay, 1998–2003.

Work began on establishing office policies, including those for employment contracts, legislative compliance, a family-friendly policy and policies on conflict resolution, sexual harassment and complaint handling procedures.

By the end of July, the Office had moved into new premises in the Vogel Building, Aitken Street, alongside the Human Rights Commission and the Office of the Race Relations Conciliator, bringing substantial savings in rent and related costs.

Another initial challenge McClay faced was some concerns expressed that he might lack independence because of his past party political background. However, he believed at the time that

this had 'advantages for the position. I can access decision-makers directly and I know what persuades them and what 'gets up their noses'. I can often get a good result for a child immediately just by accessing the apnropriate Minister, to address the issue' (McFadyen and Taylor, op. cit.). Looking back, he confirmed that his time in Parliament was indeed of considerable assistance, enabling him to 'know who to make phone calls to, how to make direct contact with Ministers, knowing what makes Ministers move quickly. This has been very helpful in doing the job of advocating for children'. It was to nrove one of the features of his term.

He also outlined his vision for the Office:

> … to be seen as a reputable, effective, common-sense reflector of the needs of children as they would express them. My personal goal is that during my time in office all the articles of the United Nations Convention on the Rights of the Child are enshrined in New Zealand law. This means that New Zealand children will be getting what they were nromised when New Zealand ratified the Convention. Children represent one third of our population but lack power and are disenfranchised. It is an honour and a deep responsibility to advocate for them. And I see an awakening of public awareness about the rights of children (McFadyen and Taylor, 1998).

McClay recalls feeling, initially, that he needed to know who his audience was:

> … as an Advocate I needed to know to whom I was advocating. In my mind, it was decision-makers and so I purposely set out to have a thrust of advocacy meant for the ears, particularly of politicians, but also for the ears of others who are in positions to make decisions on behalf of children, e.g. school principals and boards of trustees, health nrofessionals and so on.

McClay's strong background in education was also to become evident, coinciding as it did with the rapid increase that had taken place in complaints and enquiries from that sector. The steadily-evolving trend to a much stronger child/young persons advocacy function rather than welfare orientation in the work of the Office was also to gather momentum.

O'Reilly had already considerably extended the public advocacy role and nrofile of the Office by giving a huge number of speeches and workshop presentations to diverse audiences. McClay was to extend this even further. For example, in a two-month period alone (October–November 2000) he gave 20 speeches to audiences ranging from the Beyond Violence National Conference, to the Hamilton City Council's Child and Family Policy and Strategy, and the Manukau Women's Lunch-Time Forum. In the three months to 31 December 2001, he gave 22 speeches, attended 33 networking meetings, gave 84 media interviews and issued 11 media releases. And this level of activity was maintained. He believes that one result of it, combined with the Office's investigations and other activity, has meant that issues affecting children are

> … much more now the conversation at New Zealand dinner tables and after-work functions. Hopefully those conversations are to do with what is right or not right concerning children. I can tell from the change in the tone of the mail that I get as well as the telephone and casual conversations all over the country that, in the main, the vast majority of New Zealanders support the work that we are doing.

The media have generally earned McClay's respect for the way they have assisted the Office to get the message across to New Zealanders about the plight of many children. Moreover, many journalists have now developed a good understanding of 'what is meant by "the rights of children"'.

> … the NZ news media (radio, television and print) have helped the office raise issues important to children. With few exceptions, the NZ media do an outstanding job of reporting on significant issues affecting children and young people. Advocacy for children is enhanced by media which share a passion for what is fair and right for children (Annual Report, 2001).

A Nationwide Education Advocacy Service

'Parents and students needed to know and receive their rights in the education sector', stated McClay in a media release on 31 August 2000, announcing that the Minister of Education (now Trevor Mallard) had allocated funding for the Office to develop community-based child-advocacy training. The overall programme was developed by Sue Dodds and Rod Davis, with input from other staff. The first region selected for advocacy training was the West Coast of the South Island. Rod Davis was subsequently appointed to continue as West Coast liaison advocate, and this approach of giving an advocate continuing responsibility for a region has been adopted for other regions. The approach developed by the Office has been to conduct intensive, highly interactive two-day workshops to build up proficiency in child-advocacy skills and knowledge across a range of sectors:

> … the office developed the framework for researching existing unmet child advocacy training and support needs and conducting the community consultation. Staff from my office held in excess of fifty face-to-face meetings with community-based organisations, groups and individuals working in an advocacy role with children and young people. These took place in 18 different parts of the country and represented a diverse range of communities and needs. An enormous amount of information about the scope and limitations of their services was gathered (Annual Report, 2001).

A visit by McClay and most of the advocates to the Wairarapa for almost a week in October 2001 was fairly typical of the regional visits. Prior to the visit, the Office had been 'swamped with registrations from people in the community wanting to

develop child advocacy skills'. Sessions in Masterton included developing skills and strategies, school-related and other legal issues, communication with children and young people, and systems affecting them such as education, health, welfare and criminal justice. Up to 31 March 2002, some 1,000 people, mainly from non-government agencies and community service groups, had participated in workshops.

McClay, in an interview, comments that

> … the Advancing Children's Advocacy workshops and programmes has been a very significant departure from what the office has been mainly involved in over its whole history. In this last year, for the first time, we have systematically gone out of office in Wellington to the regions of New Zealand to share with them the issues of child advocacy. It has given us an opportunity to hear from the regions about the issues which affect children. We have been delighted to have been able to have an absolute interface with the Maori caregivers and the deliverers of rights to Maori children. It certainly has been a significant change in the way the office has been able to operate.

New Zealand Children's Day

> Dear Mr McClay, I think that we children should have a children's day because some children are not getting looked after properly. I think we could go to candyland after we go to McDonald's and have free ice cream (Maria Chan, St. Patrick's School, Taupo).

> Dear Mr McClay, Can we please have a children's day so we can have fun and help stop child abuse and can we please have a feed for free at McDonald's (Ken Taulaga, St Patrick's School, Taupo).

The idea of a National Children's Day had first been mooted when Ian Hassall wrote to the Minister of Social Welfare in February 1994, suggesting that a 'positive celebration of children in a way that brings them and their world before the public is needed in New Zealand'. Children were 'too often seen as a problem, a cost or only potential (not actual) human beings rather than as an integral, loved, valued, enjoyed and contributing part of our society'. He suggested one way of doing this, already followed in some countries, would be to 'to make the national day into a children's day'. John Brickell and others have written that

> … the seed for New Zealand's Children Day was sown as far back as 1994 … when Ian Hassall mentioned on radio one day that he thought it would be good to have a Children's Day in New Zealand. Little did he know that as a result of listening to this broadcast, one man, Roger Evison, would begin a process of researching internationally what other countries do to honour children. By November 1995 the Wellington Rotary Club, of which Roger was a member and past President, had developed a proposal to initiate a National

Children's Day within New Zealand. This proposal was endorsed and supported by the Hon. Roger McClay as Minister of Youth Affairs (Brickell *et al.*, 2001).

Now the Commissioner himself, McClay was invited to form a steering group in 1998 comprising CYPFS, Barnardos and other government and non-government agencies to develop the concept further. The date of the first day, Sunday 29 October 2000, was jointly announced by Minister of Social Services Steve Maharey and McClay. At the launch at Wellington High School, McClay pointed out that children often asked him why there was no Children's Day to follow Mothers' and Fathers' Day; 'without children, they tell me, there'd be no mothers and fathers'!

The inaugural day was widely promoted through the Internet, media and the distribution of materials, including 35,000 Children's Day kits. A website received over 3,200 hits. Over 200 events were organised throughout New Zealand, including a family day with live music and sand sculpture competitions. Many libraries held special storytimes and churches in Auckland and Wellington conducted special services.

Funding came mainly came from CYF, with smaller contributions from the Commissioner's Office and Barnados. There was initially uncertainty about whether

Office of the Childrens Commission

Staff and friends committed to social justice enjoying the Wellington sun at the 2002 Relay for Life.

the day could be repeated. But the first day's success, and the Minister's enthusiasm for the concept, which he said 'reflects the importance of children in our society and reminds them that their contribution is both valued and appreciated', led him to obtain Cabinet approval for funding of $135,000 annually for five years for it to become an annual event. The Office facilitated all aspects of this large initiative for the second Children's Day in 2001, including employing a project manager, controlling finance and banking, and the publication and dissemination of resources.

No Hitting of Children

Roger McClay is an outspoken advocate of a no-hitting approach in disciplining children, thereby maintaining the long-standing position of successive Commissioners. It is a position he takes regularly in speeches, columns for community newspapers, press releases and other forums. He regards the repeal of Section 59 of the Crimes Act, which allows parents to use 'reasonable force' in disciplining their children, as essential. No law exists, he points out, allowing such force to be used in disciplining adults, which 'seems to mean that it is okay to assault children, but not adults. How can that be?'. The problem posed for those who work for the rights of children is that 'reasonable force for some adults was actually assault and battery' (McClay, 1998). In a speech given in Katikati, in August 2000, he suggested that the 'most influentual action' New Zealand could take about child abuse and family violence, would be to delete Section 59 from the Crimes Act. 'It is time to have a Member of Parliament go into bat for our children. It's time for a brave MP of compassion to move for Section 59 to be dealt a blow!'

McClay praised the entry of the Governor-General, Dame Sylvia Cartwright, into the debate when, in June 2002, she told a Save the Children conference that Section 59 was a quirk in the law, when slapping an adult or beating an animal was a crime. The speech was criticised by smacking advocates, but welcomed by the Commissioner and paediatricians, who hoped it would help make the matter an election issue. But like his predecessors, McClay went further than just advocating repeal of Section 59. All hitting of children should be discouraged and replaced with more humane and effective forms of discipline, and he frequently drew attention to the number of countries (six in 1999) which had banned all forms of physical punishment of children.

Since taking a public stand against Section 59, or smacking, McCLay has continued to receive a considerable amount of correspondence on the matter. Sometimes this is supportive and encouraging, but some common criticisms are that removing Section 59 would 'turn good people into criminals by making it illegal to smack their children'; 'I am very disturbed to hear of your desire to criminalise parents who smack their children'; 'Butt out and mind your own business about how people bring up their children. Smacking a child for being naughty is discipline not cruelty'.

McClay's replies are consistently polite. But he also maintains his position and

gives full explanations for holding it. 'Some people believe that smacking is the answer for them', he replied to one correspondent in 2000:

> They try to justify hitting children as a means of control. They call hitting 'smacking', a 'good smack' or a 'good hiding' or a 'loving smack'. To someone a great deal smaller I guess all these smacks just feel like being hit. Being hurt by someone we can't hurt back arouses feelings of helpless rage which can turn inwards and make us ill or outward to make us bullies ourselves.

The Office confirmed its position and its aim to provide parents and caregivers with simple information about guiding their children's behaviour in positive, non-punitive ways without smacking or hitting, with the appearance of the publication *Choose to Hug, Not to Smack, Awhitia, Kaua e Papakitia* (2001).

Monitoring the Act

On 4 April 1999 just before 8 pm, six-year-old James (Riri-o-te Rangi) Whakaruru was taken to the emergency department of a hospital by his mother. He was not breathing and CPR was commenced, but he went into cardiac arrest. CPR was continued unsuccessfully for approximately 25 minutes and death by non-accidental injury then recorded. His stepfather was arrested, charged with manslaughter, and sentenced to 12 years' imprisonment. His mother was also arrested for her part in the assault and sentenced to a two-year suspended prison sentence and two years of supervision. The killing of James created intense media interest and shocked the nation (Report, 2000).

The Office's investigation and final 63-page report, which Trish Grant wrote and other staff contributed to, found that poor inter-agency communication had characterised the professional work with James and his family. Agencies had worked without reference to each other, and ended their involvement assuming other parts of the system would protect James. Some workers seemed unaware of the indicators of a child at risk, or did not appreciate the role they needed to play to ensure his safety. There was little attempt to engage culturally appropriate services, or to address the situation in the context of his wider whanau, hapu and iwi. The report made numerous recommendations for changes to the Government, Ministers of Social Services and Justice, the Chief Executives of CYF, the Departments of Courts and Corrections, Healthcare Hawke's Bay, the Director-General of Health, Commissioner of Police and Director of the New Zealand College of Midwives.

The report on James Whakaruru probably had the greatest impact of any investigation carried out by the Office up to this time. It was to significantly affect

how agencies of State responsible for children and young people approached their responsibilities.

McClay himself was deeply affected by the investigation, and referred to James' death frequently in his speeches as a reminder, both of the violence adults still do to children and the need for this to be eliminated by changes in attitudes and laws. He recalls the investigation as the 'biggest single piece of work of this office'. Many of the staff made contributions to the report, but Trish Grant led the investigation and wrote it, and McClay comments that she 'did an excellent job … it is my belief that the short life of James Whakaruru has done more to change the way in which New Zealanders regard children than any Commissioner for Children could have done'.

The impact of the investigation and its aftermath has clearly lingered in McClay's mind. He has visited the grave of James Whakaruru on a number of occasions. He speaks with passion of the transcription on the family headstone, 'James Whakaruru – the inspiration for a nation to cherish children', and often speaks of the distance we have yet to travel as a society, before we can say, in all honesty, that we do cherish our children.

Other Developments

McClay took steps after his appointment to improve liaison and relations with CYF. An orientation programme involving staff spending a day with CYF staff for general briefings was conducted. In May 1998, CYF and the Commissioner reviewed the protocol for CYF-related complaints received by the Office. The Office continued to monitor the CYF case review process when a child or young person known to CYF dies. The Office is notified of all deaths and although the cause of death is investigated only in an exceptional situation (as with James Whakaruru), comments are frequently made on the proposed style and scope of the CYF review. In the year from 1 July 1999 to 30 June 2000, the Commissioner was notified of the deaths of 36 children and young people known to CYF at the time of their death.

In May 1998 McClay had discussions with the Ministry of Social Welfare about his wish to make progress with a Child Mortality Review System along the lines of the draft prepared earlier by O'Reilly. In April the following year, Bob Simcock MP introduced a Bill to establish a Child Mortality Review Board. The explanatory note to the Bill pointed out that current understanding about factors influencing child deaths continued to be limited by an inability to gather all the information together, which O'Reilly had described as 'everyone having a piece of the jigsaw but no one has the full picture'. The Bill aimed to establish a mechanism to overcome that, but did not proceed, although a committee was subsequently established within the Ministry of Health to carry out this function. However, it remains a matter of dissatisfaction for the Office that it has no representation on this committee.

The Commissioner is also responsible for reviewing reports made when a warrant is issued for a child or young person to be removed for care or protection reasons

from a family under Section 47 of the Act. Approximately 35 such reports are received each year, and the Office's role is to ensure that warrants are used correctly and appropriately. McClay drew the attention of the CYF General Manager to other matters relating to the care and protection of children. This included concerns expressed by some Judges in May 1998 that children were at times being left in limbo in guardianship cases as a result of CYF reports being provided too slowly to the Court. Care and protection matters were also highlighted in a briefing paper to the Minister of Social Services, Steve Maharey, in December 1999. McClay pointed out that the 1989 Act was internationally recognised as having the potential to provide maximum assistance to children and their families. Nevertheless,

> … deficits in State social service delivery to vulnerable children and their families continue to be profiled in the media and thus in the public mind. There is a perception that there is a diminished public confidence in the Department of Child, Youth and Family Services and questions are raised as to whether it is functioning in a manner which achieves the philosophical benchmarks of the Act itself …. The following issues highlight concerns expressed to my office.

These included:

- An 'apparent mismatch' between the Department's work to encourage reporting of children in need on the one hand, and ability to deliver needed services on the other.
- Intervention plans not always being adequately monitored or reviewed.
- The needs of children who could not remain in their families or needed containment for a period of time being inadequately met.

The role and effectiveness of Care and Protection Resource Panels also continued to be scrutinised. McClay asked the CYF Chief Executive in February 2000 to advise him of the steps being taken to address apparent budget cuts which could effect the Service's ability 'to fulfil their obligations in the protection of children'. Concerns about the operation of panels were also discussed in an article by Ngaire Sheppard, '*Care and Protection Resource Panels Feeling Anxious*' (2000), which identified a high rate of staff turnover on panels, with some panels complaining that relatively inexperienced staff were being given positions of responsibility.

McClay placed considerable importance on the value of site visits to regional care and protection panels and CYF offices, with visits made to New Plymouth, Hamilton, Whangarei and the West Coast during 2001. This hands-on approach proved useful for identifying issues that could be passed on to CYF's senior management. After one such visit, McClay wrote to the Chair of the Panel that 'a good deal of progress has been made on all the issues that you and your panel colleagues raised with me … . Senior officials from the Department have followed up with me

every one of the matters I raised on your behalf.' McClay, when asked to comment on the visits, pointed out:

> We now visit the offices of the Department all around the country (20 in the last year). That is a more hands on, positive way of showing the people in the Department that while we might be reviewing them (as for example with child deaths), we are in the same boat, rowing in the same direction for New Zealand children. It is better than writing reports; it is more effective. We do not need to find people at fault, we can simply suggest better ways of doing things.

Letters to the Commissioner continued to urge mandatory reporting of suspected abuse. To one such letter, from a psychologist, he responded that he intended to 'keep pushing for it'. This did not necessarily mean the Police needed to be reported to but

> I certainly feel that in all institutions, for example schools, work places and the like, employees should be required to report what they note and understand with respect to children and their ill-treatment. They should report it to someone senior. In a school it would be the principal. Their decision would be whether to take the matter further, and that would depend on the seriousness of the issue and the suspicions and evidence. Mandatory reporting may well be difficult, but if it saved one life it would still be worth doing.

The rights of children and young people in residential care and the effects of devolution to the private sector were examined by Robert Ludbrook. His 2000 report surveyed the history of devolution, the reduction of residences provided by CYF from 26 to five in the 1980s and 1990s, and its powers to establish and maintain residences. It pointed out that no new residences had been opened during this period, despite concerns being expressed at the shortage of residential beds by the Commissioner for Children, the Principal Youth Court Judge and others. Ludbrook pointed out that successive Commissioners had identified the problems this had created, including young people being held in police cells or serving their sentences in adult prisons. Difficulties arising from the unregulated nature of privately run residences for young people were also identified.

McClay became increasingly aware of the extent to which dealing with complaints and enquiries was using up a huge amount of staff time, jeopardising other functions of the Office. He raised this with Jackie Brown, the Chief Executive of CYF, in April 2000, informing her he was reviewing office practice in fulfilling his statutory functions and would appreciate any feedback she might like to give. His two predecessors had, he suggested, viewed their responsibilities of monitoring the Act differently. Whereas Ian Hassall had 'prioritised research and projects in amongst some investigation of individual complaints', Laurie O'Reilly's attempts to raise the profile of the Office had greatly expanded the number of complaints and enquiries related to the Act. One result of this was a reduction in the amount of research that could be undertaken. McClay said he felt his own role would be enhanced by a commitment 'to both

systemic and individual advocacy on behalf of children and young people'. And in that context, he questioned whether the considerable time and resources needing to be devoted to complaints and investigations was 'the most effective way of fulfilling my monitoring responsibilities'.

Brown supported the idea of the Office being 'an active voice for children in both systemic and individual advocacy areas' and, given the need to prioritise resources,

> … my view is that your emphasis could shift away from individual case consideration towards systemic comment. In the main, I am of this view because there is no other agency or Office so well positioned to have an overview picture of the entire child welfare sector. You are in an ideal position to comment on inter-agency matters as well as issues such as compliance with UNCROC.

It is apparent that networking on behalf of children with government departments and non-government agencies such as Plunket, Barnardos, UNICEF, Save the Children, the Richmond Fellowship and Women's Refuge has been an important part of the Office's work. Generally this activity is extremely positive, but occasionally, McClay was not so impressed with inter-agency co-operation, particularly when he felt there had been a failure to consult with the Office over matters relating to children and young people. An example of this arose when the Chief Executive of the Ministry of Social Policy, Margaret Bazley, wrote to him in July 2001 enclosing a copy of a new Ministry publication, *The Social Report 2001*, advising that it had 'been produced by the Ministry with the advice and assistance of many other government departments'. The report drew on a comprehensive range of social, environmental and economic information to assist departments to develop integrated social policies and inform the wider public, and Bazley said she would be interested in any views McClay might have on it. His response to this was to write to the report's Project Manager pointing out that the first he or any of the staff had heard of the report was in the media and

> I ask the question, how can it be that a document such as this would be put together without consultation with the statutory advocacy agency for New Zealand children? … As a staff we are bound to be left with the feeling there is still a major job to be done when a Ministry such as Social Policy does not think it either appropriate or necessary to consult with my organisation when putting together a document of this nature. I wonder if this tells us something about the attitude of some policy agencies with respect to children.

The Education Sector

A high school class was set an English essay on the topic, 'How does your body betray you?' and the teacher gave farting as an example. A student then wrote about having an embarrassing erection ('boner') in class. His teacher showed the essay to the Principal

who deemed it 'sexually offensive' and 'totally inappropriate', and the student was suspended for the maximum five-day period, followed by counselling. Asked to investigate what was now a highly publicised case, the Commissioner suspected that several principles of natural justice had not been followed.

This was just one of a great number of complaints and enquiries related to the education sector the Office continued to receive. The burgeoning rate of suspensions and expulsion of students was a leading source of these. Too many boards of trustees, in the view of the Commissioner and staff, were still not following fair or appropriate procedures for students and parents. McClay launched a public offensive on the issue with speeches and press releases. 'Suspensions and expulsions from school are too often and too readily used and students at risk had rights too', he told a Ministry of Education Student Support hui in March 2000. He recommended that before any child was suspended or expelled, every school should be required to implement an Education Group Conference similar to the Family Group Conference in the child care and protection and youth justice areas. This model had been 'spectacularly successful' and 'alternatives to 80-plus suspensions from school per day need to be found'. Other staff, including Trish Grant, represented the Office at meetings with Ministry of Education officials and representatives from the Human Rights Commission, Maori and Pacific Nation organisations and secondary schools in an effort to establish effective procedures to resolve difficulties.

The Office took over the administration of the Parents Legal Information Line for School Issues (PLINFO) and McClay commented in his 2001 annual report that this experience had confirmed a 'sense of frustration that many parents voice about the lack of effective remedies when they believe that their children have been treated unjustly by school staff or boards of trustees'. The four major areas of complaint had been school suspensions, exclusions and expulsions, special needs, school fees and inappropriate discipline.

Another reflection of the importance of the education sector was a whole issue of *Children*, the Office's journal, devoted to it in October, 1999. Confusion and dissatisfaction surrounding some aspects of the implementation of Education 2000 special education initiatives generated the largest number of education inquiries received during the first three months of 2001. Most articles in another issue of *Children* (March 2000) were also devoted to special education and a submission was made to the Review of Specialist Education Services.

The many other education-related enquiries or complaints staff dealt with ranged from ERO visits to families undertaking home schooling, to the effect on children and families of school closures. Strong support for the right of children and young people to attend their local school was expressed in a submission to the Education Amendment Bill 2000. This noted that children with disabilities appeared 'particularly vulnerable' when seeking such enrolment, often being referred to other schools which

Principals regarded as 'better placed' to meet their special needs. Increasing the ability of students to have their voices heard by ensuring that provision for this was made for children below the level of Form 2, and also recommended was that at least two student representatives be elected to boards of trustees.

Complaints relating to the education sector are usually initiated by a letter or phone call. Staff investigate and may ask for a report. This is essential work but hugely time-consuming. One danger is that the Office may be captured by the need to respond to complaints that mainly involve negotiating with adults about children, rather than necessarily focusing on children's rights per se. But the work arises, as has already been shown, from the Office's much wider interpretation of its responsibilities than just monitoring CYF. However, the demands are such that scrutinising the wider role of CYF becomes more difficult, because staff are so caught up in dealing with complaints and enquiries. McClay comments:

> … the sheer volume of work and the high profile of the Office in recent years has meant more and more people being aware of us and therefore being in touch with us. We have changed the way in which we have worked so that we do not handle every enquiry and treat it as a complaint. Much more now, we refer people back to the source of their concern or the people about who they are complaining. We ask them to try again to sort the matter out at the source of their concern. Many people are, with encouragement from us, able to find solutions to the matters that are worrying them. We have tended to work that way which has given us more time to spend on the more serious issues and cases of child advocacy.

The number of the education cases arising renewed the call for an independent advocacy service or Education Review Tribunal of the kind originally recommended by Laurie O'Reilly. The arguments for this were set out by Senior Advocate Trish Grant, and Advocate Cynthia Tarrant, in articles in *Children* (Nos 30 and 31) as well as by McClay in his annual reports and speeches.

However, when, in November 1998, McClay advised the Minister of Education, Wyatt Creech, of his intention to seek financing for such a body through the MSW the Minister was not enthusiastic. He replied that he was 'still to be convinced that such a role is necessary. Schools needed to take responsibility for meeting their students' needs. If there was an external agency to do that, referral to it would be automatic … whereas I believe it is better for those who are the primary players at the local level to attempt to work through a solution together'. Undeterred, McClay went ahead with a bid seeking $150,000 per annum for staff and overhead costs to establish a formal complaints and advocacy service for students, parents/caregivers and community and government agencies to 'progress education related concerns'. Concerned at a lack of government response, in May 1999 McClay wrote to the new Minister, Nick Smith. But Smith was no more encouraging, informing McClay that steps were being taken to ensure that the Ministry of Education itself was better placed to 'answer enquiries that are coming to you'.

> The Government is not going to support your bid for funding to deal with educational complaints … some of the issues that your office is becoming entangled in are outside the Commission's brief and the expertise of your office … If the Commissioner for Children's Office expanded its brief as far as some of your staff wish, it would serve as a Ministry of Health, Ministry of Education and a Department of Social Welfare, and this would be their short-list. It is not in the interests of taxpayers or children to have multiple government agencies dealing with such issues.

McClay's reply included the observation that 'The welfare of children is to do with the total society in which they live. It might be health, housing, justice, care and protection as well as education.'

Office of the Children's Commision

Listening to children – children from Titahi Bay Intermediate School in the library of the Office in Lambton Quay.

The Justice/ Legal System

Parents in Prison

In 1998 the Office received a complaint from members of the public working with children whose mother was serving a life sentence for murdering her ex-partner. McClay's investigation revealed that the majority of children who have mothers in prison are

cared for by relatives. This could mean there was no statutory agency involved in monitoring their welfare, either in their family placement or facilitating positive contact with the mother serving the sentence. The investigation highlighted the need for an independent advocate for children to provide a monitoring and liaison role.

Complaints like this, relating to individuals and agencies having contact with children and young people with a parent in prison, continued to be received. These children's lack of 'voice' or advocacy was often identified. 'They have been cited as the 'silent voiceless victims'. They are not the ones who have committed any crimes, yet they are the ones who are left feeling they have in some way been responsible for incurring society's animosity', McClay wrote in his 2001 Annual Report. Advocates Rod Davis and Ngaire Sheppard met with a group of young people who were in this position in Christchurch in May 2001 and the results were reported in 'The Rights of Children and Young People who have Parents in Prison' (2001). McClay expressed surprise at not being consulted when, in 2002, a new Correction Department policy permitted babies to join their mothers in prison. The policy would be fine, he commented, as long as the dignity of the baby was respected, adding that he had his doubts that this would in fact happen.

Youth Suicides in Prison

David Tufala, a 15-year-old Tokelauan, committed suicide in Mount Eden Adult Prison on 25 October 1997. Damien Meyer, aged 17, took his own life at Manawatu Prison nearly two years later. In its investigation, the Office identified contributing factors within the adult prison environment itself. These included inadequate assessment upon admission, with prior histories of drug and alcohol abuse, depression and suicide attempts not being considered adequately by prison officials. 'In both cases', the report noted, 'it was Mount Eden Prison which was the focus of their acute concern and their extreme fear. They both communicated this fear to their families'. As a result, changes were recommended to the ways in which young people are assessed and monitored while in prison (McClay, 1999).

These were just two of 285 legal-justice-related complaints and enquiries received or investigated in the year ending June 2001 alone. In 2002, a shop-keeper displayed a leaflet with a picture of a seven-year-old boy, informing customers that he was a serial shoplifter. The Office became involved, with McClay making a strong statement about the rights of the child being breached, and two advocates visiting the town to resolve privacy and other issues surrounding the situation.

An enquiry was received regarding the age at which children should be allowed to baby-sit or care for other children. The Office determined that there is no clear answer, since no legislation is directly concerned with babysitting or informal child care. There is, however, other legislation, namely the Summary Offences Act 1981, which implies that a child under 14 should not be left to care for other children, since they themselves should be supervised. But problems arise in interpreting what is reasonable provision for supervision, and unreasonable time or conditions.

The Office's long-standing opposition to the incarceration of young offenders in adult prisons, a practice in breach of UNCROC, was restated by McClay in his 1999 Briefing Paper to the Minister of Social Services. While New Zealand currently had a reservation to Article 37(c) which permitted this, he hoped that current building programmes to establish appropriate youth detention facilities would allow for the reservation to be lifted. The Office remained 'strenuously opposed' to the detention of young people in police cells.

The Office spoke strongly for the children who became embroiled in the Christchurch Civic Crèche case, when allegations of sexual misconduct led to the conviction and imprisonment of Peter Ellis. Ellis has to this day maintained his innocence and the matter has become one which evokes strong division and differing points of view. Just prior to the release of Ellis after seven years in prison, McClay was approached by a supporter of the children in the case, and asked to speak on their behalf. He did so, very strongly, and used the opportunity to warn paedophiles to 'leave our children alone'. The Office of the Commissioner for Children was named for inclusion in the eventual judicial inquiry set up by the Minister of Justice, and made substantial submissions to the Rt Hon Eichelbaum.

Legal matters formed the basis of many submissions by the Office, emphasising the need to take children's rights into account. Robert Ludbrook's submission to a Law Commission Discussion paper on witness anonymity, pointed out that there are occasions when children give evidence as witnesses in court when anonymity should be considered. This was necessary to protect them from threats or pressure to withdraw, change their evidence, or give false evidence. Other submissions indicating the need to consider children's rights have covered matters as diverse as a review of the guardianship law, same-sex couples and the law, fingerprinting of children by police, the 1998 Matrimonial Property Amendment Bill, De Facto Relationships (Property) Bill, Sale of Liquor Amendment Bill, Prostitution Reform Bill, Tattoo (Parental Consent) Bill and Inquiry into Adoption Laws.

The Health Sector

A Child's Right to Medical Treatment

The parents of a four-year-old with cancer rejected orthodox chemotherapy that doctors claimed was needed to save his life, in favour of alternative therapy. The boy died. A 13-year-old died at his home after going untreated for a large tumour. His parents were devout Christians who believed God would save him, and declined medical assistance. The two cases produced a markedly different public and media response, with apparently widespread support for the parents favouring alternative medicine, and condemnation for those withholding treatment on religious grounds.

McClay commented critically on the case involving the religious parents, mainly on the grounds that the doctors involved appeared unduly cautious as a result of public support for the parents favouring alternative therapies. 'My view is', he commented, 'that parents should not have the final say when conventional medicine has a good chance of success. I'm not anti-alternative medicine … But you don't wander off into the bush to pick tea-tree berries for a broken leg. You go to a hospital' (McClay, cited in McLoughlin, 2001).

In 1999, McClay suggested that although recent cases had highlighted 'the difficult issue of reconciling the perceived conflict between children's rights and parents' rights and responsibilities, there was no fundamental conflict, because parental rights were in fact parental responsibilities.

> It is the strong view of the Office of the Commissioner for Children that children should be treated as autonomous rights holders and not as mere chattels belonging to the adults under whose responsibility they fall. While recognising the dilemma some parents find themselves in when consenting to medical treatment for their children, I contend that every child has an indisputable claim to all the rights set out in the United Nations Convention on the Rights of the Child. These include the right to life, to receive medical treatment … . The State is required to uphold these rights and where these come in conflict with the perceived rights of others such as parents or guardians, the rights of the child take priority. In the light of the two recent cases of children with cancer, it is clear that further examination of the complex ethical issues in such cases is required so that children's rights are protected in serious life or death situations (Briefing paper to Minister 1999).

Subsequently a discussion paper setting out the issues, 'A Child's Right to Medical Treatment: Reconciling the Perceived Conflict between the Children's Rights and Parents' Rights' (1999) was written by the Senior Advocate, Trish Grant. McClay has also held discussions with Ministry of Health officials to establish guidelines for mediation when parents and medical specialists disagree about what is appropriate for child medical treatment. In September 2002, draft terms of reference were being drawn up for a committee comprising the Commissioner, medical specialists, the Chief Advisor (Child and Youth Health) and others to undertake this task.

Other Health-related Matters

The health sector generally has continued to be an important area of activity, with the 2002 annual report recording that the Office responded to 96 enquiries and investigated three major complaints. Concerns about low immunisation rates, the re-emergence of tuberculosis and high death and hospitalisation rates among Maori children have been expressed in briefing papers. In 1998, McClay raised strong objections to Plunket's CEO when Plunketline closed at short notice, asking him why the decision had been made so quickly and 'Who would a young parent ring now'?

Fluoridation

Prior to Auckland City Council voting on whether to fluoridate Onehunga's water supply, McClay wrote supporting the move 'so that children may benefit in the way that science has so conclusively proved they will'. On the basis of correspondence received in the Office, this issue appears to generate a level of heat amongst some members of the public equal to the anti-hitting campaign. One letter to McClay stated, 'Please check your out-of-date facts … . The fluoride being forced on everyone is poison, as it is the throw-out tailings from the aluminium smelter. People rarely use aluminium saucepans any more for the same reason. Only natural fluoride from the good earth is any good.' The vote to fluoridate eventually lost by ten votes to nine. One doctor who wrote to McClay thanking him for his support, expressed the 'extreme disappointment of community members, health workers, and especially the School Dental Service at this result'.

Cigarette Sales

The Health Department's use of children to gain convictions for the sale of cigarettes to underage individuals, 'controlled purchase operations' (CPOs) to use the Health Department's term, commenced in 1999. The Office opposed the policy and lobbied to get it stopped. Following a meeting between McClay and Ministry of Health officials, the Director of Public Health advised McClay that the Ministry had immediately advised smoke-free officers to ensure that only volunteers aged 13 and over assisted in CPOs. It was pointed out that this was already the case for most CPOs – of 564 visits carried out between 1 July 1998 and 1 March 1999, only 27 (4.7%) involved 12-year-olds. The rest of the volunteers were aged between 13 and 16. McClay requested the number of volunteers subsequently involved in defended hearings and the response was 13. However, despite his intervention, the Ministry remained adamant that CPOs were significantly reducing sales to minors, and for the health of children and young people it was therefore vital for the operation to continue.

Cellphone Sites

A complaint that a cellphone transmitter site was to be located close to a primary school led to correspondence between the Commissioner, local bodies and telephone companies throughout 1998. A submission was also made to a Ministry for the Environment discussion document on developing national guidelines for managing the effects of transmitters. McClay maintained the view held by previous Commissioners that information and research available pointed to a disagreement among experts as to the possibility of health effects. While that existed, the health and safety of children needed to be the paramount consideration at all times. If any possibility existed of risk to children, transmitters should not be sited nearby.

Stored Semen

Invited to comment in 2001 on Ministry of Health draft guidelines on the use of stored semen from a deceased man, McClay again drew on UNCROC. This made it 'very clear that a child has the right to an identity (articles 8, 29.1(c)), the right to family, cultural identity, and to know and be cared for by their parents'. His main concern was for 'the child born as the result of the use of a deceased man's semen. The child will be denied their fundamental right to know one of their parents'. Before the guidelines were implemented, it was therefore essential that an advocate for the child be included in the process.

A wide range of other health matters have been dealt with. After meeting a large group of health professionals in February 2001, McClay advised the Minister of Health that a common theme had been the need for a section within the Ministry solely responsible for child health. Its absence led to duplication of effort and breakdown in communication, whereas its introduction, advocated by the Paediatric Society of New Zealand, could positively influence child health development. The scope of activity in the health field was also reflected in many submissions, including those on the Injury Prevention and Rehabilitation Bill, Health and Disability Services (Safety) Bill, Intellectual Disability (Compulsory Care) Bill, the Review of Maternity Services and the Health Funding Authority Non-Clinical Services Review Project.

Fathers

The project initiated by Laurie O'Reilly encouraging fathers to play a positive role with their children continued. McClay and John Bowis from Save the Children jointly encouraged fathers to spend more time with their children on Fathers' Day 1998, launching a new poster and leaflet on fathering featuring All Black Norm Berryman with his two children and the slogan, 'being a good dad is the most important position you can ever play'. The results of further research from the project on fathering appeared with the publication of Ann Kerslake's *Fathers Who Care: Partners in Parenting – Children's Views*, and John Brickell presented findings from the research to a conference on Fathers, Families and the Future. The project was also showcased at the 1998 Congress of the International Society for the Prevention of Child Abuse and Neglect.

Films, Videos, TV and Publications

The possible negative impact of aspects of the mass media on children and young people meant some involvement by the Office was inevitable. During Ian Hassall's term, a Films, Videos and Publications Classification Bill was 'fully supported' in his submission. Sections of the Bill particularly endorsed were those regarded as providing explicit protection for children and young people from exploitation and/or exposure to material that might be harmful to their well-being. In an another example, Hassall had taken what he described as the 'unusual step' of writing to a newspaper editor in

May 1993, asking him to 'consider pulling back' on the news coverage of a family facing charges of child neglect. His grounds for doing this included the possible identification of the children, their exposure to ridicule by other children, and that the publicity was likely to harm rather than assist possible family reunification.

Laurie O'Reilly urged the media to do more to protect children and young people from adverse influences and negative role models in an address *Finding a Voice – Perspective on Youth Radio* (1996). He also encouraged those in control of the media to give young people a say in policy and programmes, to 'Define better ways to ascertain what they really want and need and to give them more responsibility'.

Roger McClay also soon became involved. In a presentation to the Broadcasting Standards Authority in October 1998 he drew attention to several articles of UNCROC with implications for the media and children. These included Article 17, stating that New Zealand would encourage the development of appropriate guidelines for the protection of children from information and material injurious to their well-being. Research findings on the possible effects of violence on television and the unacceptable way mental illness was sometimes referred to on children's programmes were also discussed.

In 1999, a TV-programme host opened an envelope to reveal the DNA test results of a six-year-old in South Auckland. A boy with Attention Deficit Disorder Syndrome (ADDS) was filmed, the reporter describing his behavioural problems and their effect on his mother and sisters. Footage was shown of him being restrained as he exhibited what was described as ADDS behaviour, and a portion of his medical records showing his name was disclosed (*Children*, September 1999).

Complaints regarding both programmes were laid with the Broadcasting Standards Authority (BSA) by McClay and other parties, including the Minister of Social Services, Work and Income. These were upheld in a 1999 decision on the grounds that the rights of children to privacy and standards of taste and decency, fairness and justice had been contravened. McClay complained that the broadcaster's action

> … seriously compromised the child's right to privacy, and his right to have his opinion (that he did not want to be filmed) listened to and respected. This young boy was not treated with the respect he deserved and was therefore not protected from the risk of further degrading treatment (He …) would have had to attend school the following day, having been subjected to these violations of his basic rights on national television (Submission 1999).

He added that it was highly inappropriate for the mother's statements that she wanted the child removed from her care, and her expressed feelings that she wanted to kill her son, to be 'captured' on the records of a nationally televised programme. Actions of this nature were

> … extremely damaging to the psychological and emotional welfare of this child. … The media can have a powerful impact in highlighting injustices against

> children and gaps in services and resources for children …. However, this type of coverage needs to be provided with a clear undertaking on the part of producers to uphold the child's rights and integrity and to avoid negative stereotyping and sensationalist reporting.

McClay described the findings in the two cases as 'hallmark decisions in favour of the rights of children to privacy and dignity' (2000 Annual Report). He had written to the BSA's Executive Director, offering to work with him and media representatives to examine guidelines and principles for reporting on issues involving children. Journalists and media organisations needed to maintain 'the highest standards of ethical conduct in reporting children's affairs', and he made other suggestions to minimise harm to children. The BSA's response was that following decisions on complaints involving children's privacy, it intended to clarify current privacy principles by adding that 'Children's vulnerability must be a prime concern to broadcasters. When consent is given by the child, or by a parent or guardian or someone in *loco parentis*, broadcasters shall satisfy themselves that the broadcast is in the best interests of the child'.

The death of a five-year-old child and the apparent suicide of his mother were extensively covered by media in 2002. The mother's estranged 15-year-old daughter read from her mother's suicide note during a television interview. McClay complained to the TV company on the grounds that the interview had breached the Television Code of Broadcasting practice, specifically Standards 1b (Good taste and decency); 3a (Privacy principles); 6e (Fairness – care when dealing with grief and bereavement); 6f (Fairness – exploitation and humiliation of children and young people); 9i (Children's interests – exploited and humiliated); 10g (Violence, graphic).

The Office and the Children's Television Foundation jointly organised a major seminar on Children's Rights and the Media in Parliament in March 2000. It also organised and chaired a reference group to encourage New Zealand-based social research on media influences on children, and participated in a panel considering submissions regarding revised advertising codes for children. A Media Policy Paper written by John Brickell was published in the July 2000 issue of *Children*.

Literature

The Big Book of Urban Legends had been on display in the children's section of a Wellington branch library, had not been classified and was available for loan to borrowers of all ages. Following a complaint, McClay submitted the book for classification to the Chief Censor of Film and Literature on the grounds that it contained material which was 'offensive and damaging' to children and young people, with 'highly violent and sexual content'. Numerous examples were provided including: 'Slasher in the supermarket' (hides under car – slashes ankle and ties up victim) p.18; 'The decapitated motorcyclist' p.27; 'The deathcar' (someone murdered and

tied up in boot) p.29; 'The babysitter and the man upstairs' (the three children were all murdered) p.60; 'The hippie babysitter'(the babysitter murders the baby and makes a casserole out of it) p.62; 'Mommy's little helper' (a mother beats her child for wetting her pants and threatens to cut off his penis. His sister cuts it off with a knife) p.84; A picture of a cat sucking a man's penis, p.114.

The Office and Role of the Commissioner

In October 2000 the Office moved from the Vogel Building in Aitken Street to a new home on the 12th floor of 86–90 Lambton Quay. There were also significant staff changes. Robert Ludbrook left in 1998, the Office having benefited immensely from his experience as one of the few lawyers in New Zealand with extensive expertise in children's issues. He was replaced by Sue Dodds, another lawyer who had come from a Community Law Centre background. Six out of nine staff resigned in 1999 and several new appointments were made at this time. Heather Henare had previously worked with CYPFS and Child Abuse Prevention Services, and Rod Davis came from the Wellington College of Education. Bobby Bryan was also from CYPFS and implemented a project to improve the Office's understanding of cultural issues. Mary Lynch had a background in social justice and advocacy issues and Karen McKechnie joined as receptionist. Pauline Coupland left in March 2002 and was replaced by Gina Roberts. In a tribute to Pauline, Roger McClay said her years with the Office had 'given her a wealth of knowledge and vivid memories of glad and sad times. Her depth of knowledge, passionate advocacy and skilled administrative management are a huge loss to us.' Gordon McFadyen, who had been an Executive Manager with CYF and had wide experience in social work, the government sector and parliamentary processes was subsequently appointed as a senior advisor.

The Office and Politics

Roger McClay's utilisation of his knowledge of the parliamentary system to promote children's rights has been referred to earlier. One reflection of this has been his frequent response to members of the public who write to the Office about an issue that concerns them. He suggests that they 'find a friendly MP' who is sympathetic and ask them to introduce a Private Member's Bill, or to advise on what is required to present a petition to Parliament. 'Do you have a friendly Member of Parliament with whom you can sit and discuss these issues? The MPs will find it difficult to wade through if it is four or five pages. You have to be succinct and put the issue in front of them', he wrote to one correspondent, and, 'Can I suggest you find a "foster-parent friendly" Member of Parliament who might be willing to do some work on putting together a Bill for you', to another.

This political understanding and interest took other forms. In the run-up to the

1999 General Election McClay encouraged a 'Vote for Children' campaign which was supported by Save the Children, the National Council of Women, Kidsline and other bodies. A kit was produced setting out the needs of children in areas such as health, education, mental health and parenting. This encouraged organisations and individuals to lobby political parties and candidates for recognition of children's rights, needs and aspirations, and also to encourage voters to consider these. The Office was active in other ways, announcing its intention to seek details from political parties on their policies for children, contact media interviewers and journalists to suggest they ask questions of parties and candidates focusing on children's rights and needs, developing issues papers, and 'Vote for Children' and 'Working for Children' T-shirts.

Although the early election in 2002 limited the amount of time to organise and advocate to candidates about children's issues, the Office continued to highlight 'Children and the General Election', and also published extracts on children's policies from each of the main political parties in the June 2002 issue of the newsletter. McClay welcomed the 'new trend' for political parties to 'actually publish children's policy and position papers', whereas in the past such policy was 'simply included in Education, Social and Health manifestos'.

McClay suggested in his 1999 Briefing Paper to the Minister that, as the Government's principal adviser on children, he should be consulted during the drafting and early policy work stages before legislation was introduced. Moreover, legislation should be subject to child-impact assessments. This idea had been recommended by UNCROC in its response to New Zealand's 1997 Compliance Report. He also announced his intention of consulting MPs to identify whether there might be support across party lines for a regular forum, such as a Parliamentary Committee, with a specific focus on children and young people's issues and an interest in promoting their best interests.

More recently, a decision has been made to approach representatives of each party represented in Parliament with the idea of forming a 'Children's Caucus', such as exists in the House of Commons, enabling child rights specialists to speak to meetings of interested MPs. 'New Zealand children too deserve such important recognition', McClay commented in a briefing paper to the Minister, adding that 'there are many issues about children on which there is little political disagreement. I see more co-ordinated approaches to such issues. Children wait too long for action when there is often little disagreement about what is needed.'

The need for 'a kind of Grey Power, but for those at the other end of the age spectrum' was proposed by McClay in September 2001. Because so much more needed to be done for our 'littlest citizens', he was supporting a Plunket initiative to develop a 'Littleese Lobby'. This would draw up and identify activities parents, families, communities and society could do to give every child a chance to thrive before reaching five. It was launched by the Office and Plunket with assistance from New Zealand celebrities in December 2002.

International Links

McClay has regarded the development of links with similar offices for children overseas as an important part of his role. He hosted an inaugural meeting with the Children's Commissioners of British Columbia, New South Wales, Queensland and Tasmania, assisting with a programme enabling them to meet the Minister of Social Services, Principal Family Court Judge, Chief Executive of CYF and visit a local school. Amongst the issues discussed was the operation of children's helplines in Canada and the Australian states, with a telephone number advertised so all children are aware of it. At the New South Wales Children's Commission, children can ring in and have a three-way conversation, from them to Commission staff and to a referral agency. The meeting resolved to create a formal grouping of Commissioners for Children of Asian and Pacific Rim countries.

McClay describes these international links to me as

> … very valuable indeed. My attendance at the Special Session of the United Nations held in May 2001 also enabled me to attend the first World Meeting of Ombudsmen for Children. All Commissioners for Children have given a commitment that they want the rights of children promoted in all the nations of their region. To that effect, I will be travelling soon to Perth to promote the need for a Commissioner for Children's Office in Western Australia. These links are good as we have much to share with each other. Three of my staff have visited the offices in Queensland and New South Wales in the last twelve months and we have gained a good deal of knowledge to help us implement policy here.

Greater Independence

Some response finally came to requests by successive Commissioners for the Office to be given greater independence, and for the significance of the UN Convention in its work to be officially recognised. A degree of greater autonomy was achieved from 1 October 1999 when the new Department of Child, Youth and Family Services was established. While the Office continued to monitor the Service as part of its statutory obligations, its funding was now negotiated with and administered separately by the Minister of Social Policy.

In November 1998 Labour's Social Welfare spokesperson, Steve Maharey, unveiled a Children's Commissioners (Convention Rights) Bill. As the title suggests, its main aim was to give UNCROC 'a proper place in New Zealand law' by ensuring that legislation already in place to protect the rights of children was adhered to. The Bill would strengthen the Commissioner's powers, by enabling directions to be given regarding compliance to persons or organisations when consultation had proved unsuccessful and non-compliance was substantial. The Commissioner would also be able to make reports to the Prime Minister on the rights of the child and international agreements concerning children.

Although the Bill did not proceed, its appearance was significant, reflecting growing official recognition of the importance of compliance with the Convention and the Office as the logical body to ensure this. Successive Commissioners had pointed out that if the legislation creating the Office had been passed several years later, UNCROC would probably have had a central place in its statutory responsibilities and obligations.

A Parliamentary Commissioner for Children Bill, introduced on 17 March 1999 by Alliance MP John Wright, had a much stronger focus on increasing the Commissioner's independence (*Children*, April 1999). This would be achieved by making the Commissioner an Officer of Parliament, like the Ombudsman and the Parliamentary Commissioner for the Environment. An Officer reports directly to Parliament and is, essentially, one of its arms outside the public service and not subject to Ministerial Control. The effect would be to eliminate the long-standing source of frustration to successive Commissioners of having to negotiate funding and performance agreements directly with the relevant Minister.

'As successive Commissioners for Children have found, independent scrutiny of Government and Bureaucratic practices is difficult for watchdogs tethered and fed by those they are supposed to be barking about'. This was how McClay described the relationship in a submission to the Social Services Select Committee strongly supporting the Bill (1999). His submission brought together all the past historical, comparative and financial arguments. Creating the position of Officer of Parliament would, he said, provide independence 'of a more transparent nature than is currently the case'. Past recommendations for greater independence in various reports, such as that by the Mason Committee, were identified. McClay reminded the Select Committee that O'Reilly had earlier 'highlighted the irony of the Commissioner's current status' by pointing out that, with respect to funding bids, 'the Commissioner is akin to a child, in that he is not permitted to speak for himself in matters that affect him'. This could, McClay suggested, be said to characterise the Commissioner's position generally, in that he was not separate from the agency he was required to monitor; 'nor is it absolutely clear that the Commissioner is free from political interference'.

The Office's expanded role in education and health issues was also referred to by McClay. He suggested that its statutory positioning in 'welfare' now limited the Commissioner's role as chief advocate for children, adding to the case for greater independence.

Among other submissions on the Bill was one by Ian Hassall who supported placing the Office under the direct authority of Parliament. He also recommended that the Commissioner's main function as a children's advocate be made explicit, with UNCROC as the main frame of reference. The Bill should be 'reconstructed as a stand-alone one', separate from the 1989 Act, because the association of the Office with that Act 'although convenient and timely was, then, an accident of history' (Hassall, 2000).

However, the Committee concluded that while the Commissioner's independence

and powers should be strengthened, becoming an Officer of Parliament was not appropriate. The Minister proposed, instead, in a memorandum to Cabinet's Social Policy and Health Committee, that the Commissioner continue to report to him and be funded from vote Social Services, with funding and purchase advice provided by the Ministry of Social Policy. Becoming an Officer of Parliament would be 'inconsistent' with the 'primary function as an advocate for children' (1999). But independence could be enhanced by establishment under a separate statute, and by standardising the appointment provisions with those of other similar commissioners. The Commissioner should also have the power to require that written information and documents be provided to assist in carrying out his inquiry functions effectively, and should be given additional statutory functions to promote UNCROC in New Zealand because:

> Children's need for advocacy is founded on their position in society. They do not have the right to vote, are vulnerable by virtue of their age and stage of development and are often unable to directly influence decisions about matters which affect them. They generally have limited options for self-advocacy and few organisations of their own. Children therefore need representatives or advocates to put forward their interests, rights and perspectives in decision-making. Often, but not always, this role falls to families. To be an effective and credible advocate a Commissioner for Children should be informed by UNCROC and be able to demonstrate he/she is representing, or at least informed by, the views of children (1999).

The Minister recommended that while the Commissioner should have the statutory function of 'advocating for children in general', this should not extend to 'any Court or Tribunal'. But existing limitations on the Commissioner's investigation function to decisions under the CYPF Act should 'be removed and that it also cover "rights" as well as "interests and welfare"'. He identified a 'general lack of clarity' with regard to the Commissioner's role in relation to policy advice, and proposed that government agencies should be informed of the 'need to consult the Commissioner early in policy development processes concerning children'. He noted a purchase agreement now existed with the Secretary of Education for the provision of an Education Advocacy Service. And he proposed that the Commissioner's statutory functions extend to promoting 'accessible and effective complaints mechanisms for children within other agencies, and monitoring the nature and level of complaints'.

'A Commissioner for Children Bill will be introduced to the House this year … entirely separate from the Parliamentary Commissioner Bill currently being considered by the Social Services Committee', the Minister informed the Commissioner in June 2001. This gave the Office its own separate Act of Parliament and strengthened the Commissioner's statutory powers to promote UNCROC and monitor its application by government departments. The Minister claimed on Morning Report (8 August 2002), that it was the first time anywhere that responsibility for promoting UNCROC had been given to a body like the Office of the Commissioner.

If the Bill proceeds as expected, the Commissioner will still be required to monitor the CYPF Act, but with a widened brief to include the rights, interests and welfare of children in both government and non-government agencies. As has already been pointed out, the range of the Office's work has already expanded greatly, with a virtual explosion of activity in the education area alone. The Bill legitimates this wider involvement, mandating a right to monitor the well-being of children throughout society. It provides the Commissioner with a new power to require any person to provide information and to produce documents, and it will be an offence to fail to comply with such a requirement. The new power will not extend to investigating the decisions of courts and tribunals, although their records will be accessible.

The new Bill had been eagerly awaited by the Commissioner and staff and McClay's support for it was obvious in a media release. 'This is a bold statement by Government and New Zealand society that we value our children …. The new legislation … puts beyond all doubt that the Office of the Commissioner for Children is an independent body.' He commented that the Bill incorporated to a large extent improvements to the statutory functions of the Office recommended by himself and previous Commissioners, UNCROC and child advocates within government and non-government sectors. However, when invited to comment on the Bill by John Angus, a senior manager at the Ministry of Social Policy, he disagreed with the Commissioner's continuing inability to investigate courts or tribunals, and identified the need for a Deputy Commissioner. He also requested a provision enabling the Commissioner to support the Family Court 'in matters of safety around the placement of children'. There had been

> … significant concern from this Office and the Family Court relating to situations where the Court has awarded custody to the Chief Executive of the Department of Child, Youth and Family Services who subsequently have made unsafe or inappropriate placements of children and young people … A provision is needed which allows the Commissioner for Children to respond to a complaint relating to a child's safety, whose case is currently before the Court. The Commissioner has a duty to bring matters of this nature to the attention of the Department (7 August, 2001).

McClay points out, when interviewed, that this Bill is likely to pass because it is in the name of the Government, whereas previous unsuccessful Bills introduced by back-bench members had not necessarily had the backing of the Government of the day. He describes there having been

> … little disagreement within the Parliament about the need to strengthen the Office during its passage through the House. The bill is a good bill. It gives us some more powers, but not absolute powers. It raises the profile of children's issues and it puts children a little higher up in the pecking order of things. The inclusion of UNCROC … is a significant step for any country to take. It means the Convention will be read more and talked about more.

CHAPTER

5

Postscript: The Fourth Commissioner – Dr Cindy Kiro, 2003–2008

The passage of new legislation in December 2003 concluded the first phase of the life of the Office of the Commissioner for Children. The transition from the Children's, Young Persons and Their Families Act 1989 to the Children's Commissioner Act 2003 highlighted a shift in focus from case-based protection work to a more mature role as proactive protector of children's rights through the application and monitoring of UNCROC.

The Fourth Commissioner for Children was appointed in September 2003 for a five-year term. Cindy Kiro is the first woman and Maori to be appointed to the role. Within three months of Cindy Kiro's appointment, the new legislation was passed.

Cindy had been an Associate Professor for a Research Centre based at Massey University in Auckland. She had also advised the Government's Child Policy Reference Group, along with the first Commissioner, Ian Hassall. Her background in social work, community development, research, policy development, management and Maori development, and experience as a mother, ensured her contribution to the development of the next phase of the Office of the Children's Commissioner.

Kiro set about establishing two teams within the Office: Investigations and Advocacy. Each of these are built around the two core legislated functions of the Commissioner. The intention is to work more intensively in each of the areas, with particular emphasis in the Investigations team on more effectively monitoring Child, Youth and Family Services. This includes working with them on incorporating quality feedback mechanisms and complaints procedures that address complaints received by the Office of the Children's Commissioner regarding child protection matters.

Dr Cindy Kiro.

The Investigations team is also responsible for any investigation carried out by the Commissioner under both Acts, including the development of clear criteria as to which cases in which circumstances would be investigated. Future investigations may be as much around living children at risk as those who have been killed.

These quality and complaints mechanisms will include turning the Office's attention to other sectors in addition to child protection. In particular, the increasing number of complaints about the education sector will be the responsibility of this team to resolve.

The Office of the Children's Commissioner's responsibilities in the health sector overlap with the Health and Disability Commissioner, Human Rights Commission and Ombudsman's Office. This team advises how these are dealt with.

The expanded authority to require information to be provided by organisations on matters relating to the welfare, interests and rights of children allowed by the Children's Commissioners Act, with penalties of a fine for failure to comply, envisages a broadening of the powers of the Commissioner that will be reflected in the broadening of areas from care and protection, to a more active focus on youth justice, health and education.

The advocacy component of this work, particularly that which includes public education, media liaison, and community development, is the responsibility of the Advocacy team. This team is therefore responsible for key relationships between the Office and stakeholders (except for Child, Youth and Family and Youth Justice relationships – which are the responsibility of the Investigations team), including directly with New Zealand children and young people, with Local Government, with Iwi, NGOs, with Maori and Pasifika community organizations, other Commissions such as Human Rights, with new migrant organizations, with Ministries such as Social Development, Education, Health, Housing, Justice, Courts and Corrections, Foreign Affairs and Treasury.

The Advocacy team's work includes events such as the First Call for Children Symposium held on 12 February 2004. This meeting of 300 young people and adults was preceded by a Youth Forum with 150 young people aged 10–17 years from around New Zealand. These young people had been sponsored by local Councils, Ministries such as the Ministry of Social Development and NGOs such as Barnados. The purpose of this Symposium was to identify those things most affecting children and young

people and to solidify advocacy leadership with children and young people in Aotearoa New Zealand.

The team is also responsible for developmental training around children's rights, especially UNCROC and how this applies to the work of community organisations, Ministries, Parliament and the public generally.

In addition they are responsible for the Young People's Reference Group – the main mechanism for ensuring that young people's input into the ongoing work of the Office is operationalised. This includes planning for events such as the Symposium, the vision of the Office reflected in the Strategic Plan, key relationships management, media work and local community engagement. Each of the nine young people aged 12–17 years in the group have involvement with their own communities and provide feedback to the Office on these activities, as well as fronting work done with the Office in these communities.

There is a continuation of the educational advocacy training offered to many rural and smaller communities throughout New Zealand, with an extension of this programme into large urban centres such as Auckland and Christchurch. The programme develops child and youth advocacy capacity within these communities and provides ongoing support for this work through advice and educational resources based in the Wellington office.

This encompassing of more diverse groups and communities recognises the increasing diversity of New Zealand's child and youth population in the future. To this end an Auckland office will open in 2004/05 to ensure that the Commissioner remains in touch with the interests of a significant group of children. This will also facilitate relationships with NGOs and other sectors, such as business, crucial to advocating for children.

The appointment of a policy analyst/ research position, acknowledges the Office's early input into policy making, while the appointment of a part-time media consultant similarly recognises the significance of the media in public education around children and young people's advocacy.

Staff appointments reflect the increasing demand for highly skilled professionals working with those experienced and skilled in community advocacy, research and policy development. Staff expertise includes technical areas such as law, teaching, social work, journalism and medicine as well as community advocacy. This makes it an exciting multi-disciplinary environment to work in to achieve the Office's agreed vision for 2004–2008 that 'children's rights and interests are recognised and widely supported'.

Conclusion

Current and Future Directions

Mike Doolan, when asked whether the Office has fulfilled the original vision for it, commented:

> We're never now not going to have a Commissioner for Children. If any earlier view that it was just going to be a stop-gap measure still exists, it's wrong. It's a very good safety net, and good that we have an independent Commissioner who can stand up and say the things that need to be said.

The most up-to-date overview of the intended future direction of the Office is found in the Commissioner's most recent briefing paper to the Minister of Social Services. This highlights seven priorities related to the Government's key goals. In recent years, the Office's budget has been increased and this has created new possibilities for action. McClay sees this as the result of 'respectful lobbying, an awakening on behalf of the public of New Zealand about the importance of children's issues which politicians have obviously picked up' (2002). The first priority identified is to improve accessibility to the Office for children of Iwi Maori because 'Despite the high public profile of the Office … the number of Maori (and Pacific peoples) accessing the services of the Office is low.' A forum is planned to develop an indigenous response to UNCROC and promote the outcome to Maori organisations nationwide. Moreover, future Advancing Children's Advocacy workshops will focus on grassroots Maori and iwi organisations.

The long-standing frustration of successive Commissioners that limited resources severely restricted the capacity to conduct much-needed research has frequently been referred to. Under McClay, the Office has tended to focus on public advocacy and case work with capacity for research being rather restricted. But awareness of its importance, combined with the additional funding received, led to a Principal Advisor, Policy and Research, being appointed in September 2002. McClay wants the appointee to 'ensure that policy positions on issues relating to the interests, rights and welfare of children are developed after appropriate consultation with children …. I want to ensure that local, national and international research outcomes inform public debate and policy development in respect of children's issues in New Zealand' (Briefing Paper 2002). There is obviously huge scope for work in the area. For example,

there has still not been any comprehensive review or research on the outcomes of the care and protection provisions of the 1989 CYPF Act. Nobody, therefore, really knows the extent to which children placed with whanau have been better or worse off, and the success or otherwise of the Act in that respect will remain unanswered until thorough research is undertaken.

McClay's overview of priorities and future directions at the end of his tenure also identified the Office's continuing responsibilities for monitoring the performance and procedures of CYF. With additional resources now available, it is intended to compile a comprehensive annual report on the Department's performance, data from which will also 'assist any research undertaken into the effectiveness of the Care and Protection provisions of the CYPF Act, research which the Office of the Commissioner for Children believes is overdue' (Briefing Paper 2002). When asked if the Office had fulfilled its original vision, Mike Doolan was much more circumspect regarding its role of monitoring the Act and the Department. 'I can't really say how effective it's been [in that respect]. But even the Department itself doesn't know how effective it's been.' Doolan views the Office as having developed a rather different and wider role, particularly focused on child advocacy, 'which is probably now entrenched. It's all excellent activity.'

UNCROC has been a vital framework and guide for the work of the Office for many years and its importance will increase. The new legislation will *require* it to promote UNCROC and research by Taylor, Smith and Nairn (2001) demonstrates that this is timely. It showed the 'lack of a culture of listening to children in New Zealand' and a 'disturbing lack of knowledge of UNCROC amongst secondary school students'. The Office plans several new functions and a major project to promote UNCROC, including raising awareness and understanding of it, advancing and monitoring its application by departments of State and other Crown bodies, promoting children's participation and approaches that give weight to their views in decisions affecting their lives (Briefing Paper 2002).

Much of the work of the Office involves receiving complaints and making investigations that often involve less positive aspects of the experience of children and young people. This is essential activity required by statute. But it almost inevitably gives a 'problem orientation' to much of the Office's activity. Successive Commissioners have, nevertheless, attempted to emphasise more positive aspects, as for example by the celebration of a National Children's Day. Efforts to hear the views and voices of children themselves have been accelerating recently, both within the Commissioner's Office and more widely. The Government established an 'Agenda for Children' in July 2000, a concept that had been promoted for some years, followed by the appointment of a Children's Policy Reference Group and development of a discussion paper and questionnaire for children and adults. Launching the Children's Agenda Discussion Document in April 2001, the Minister, Steve Maharey, noted:

> … unfortunately it can be a rare event for politicians such as myself to get the opportunity to hear first hand what young people think about growing up in

> New Zealand … . In the past it has been uncommon for the government to take account of the views and insights of children and young people … . By talking to children (and others) we can ensure our policy is reflective of the needs of some of our most under-represented members of society … . Hundreds of children and young people aged 5–17 years will be asked about what makes New Zealand a good place for them, and what would make it better, and what they consider to be the important issues for children and young people (Speech notes 11 April 2001).

Welcoming the consultation with 7,500 children, young people and many interested adults that subsequently took place, McClay commented that the articulation of issues relating to children's rights and entitlements in the Agenda's document would be positive for both government and non-government policies, as well as services for children (Briefing Paper 2002).

The Office is also incorporating the increased emphasis on greater involvement of children and young people in its activities. It has appointed a young people's reference group of nine young people aged 12–17, selected from around the country. They will advise the Commissioner on goals and strategic direction, and assist with consulting children and young people. In addition, because the Office does not have regional offices, a toll-free number (0800 A CHILD) will enable young callers from outside Wellington to access the services of the Office.

These are significant developments in the Office's history. When the world's first office for children, the Norwegian Ombudsman's Office, opened in 1981, obtaining children's views and treating them seriously was immediately given a high priority. (Flekkoy, 1991). By comparison, although there have been modest efforts along these lines from time to time in the past, the same emphasis has certainly not been given to obtaining the views of children and young people by the New Zealand Office. Ian Hassall comments that 'we did some of that but not nearly as much as [the Norwegian office]'. At the start of his term, Laurie O'Reilly identified as the second most important objective the need to 'ensure that the child's voice is heard in all matters affecting the child'. But towards the end of it, he described as 'particularly frustrating … the slow progress in developing opportunities for the involvement of youth so that their "voice" can be truly heard' (O'Reilly, 1997).

As the above examples demonstrate, McClay was keen to improve the direct access of children and young people to the Office. At the end of his term he commented:

> … more are starting to write, a few are now starting to ring as well. I introduced the 0800 freephone system so that more young people can be in touch. I believe that we still have a way to go in terms of including young people and encouraging them to be part of this office and for them to know that this is an office which can speak out for them. Once again, the establishment of the Young People Reference Group will help us a good deal to know how we might make progress in this area.

Appendix:

Some Achievements of the Office of the Commissioner for Children 1989–2003

Are conditions for children and young people today better than they would have been if the Office had not existed? Some achievements have been noted throughout the study. However, below I have attempted to identify these more systematically. No claim is made that this is a definitive list. And it is important to note that many successful outcomes have been the result of collaborative efforts with many other organisations.Indeed developing networks has undoubtedly been an important part of the Office's work. This has involved frequent 'bridge-building', between government and non-government organisations, central government departments and their regional branches, and with local Government.

Some work of the Office, such as raising awareness of children's rights and welfare, promoting the importance of UNCROC, and contributing to children's issues becoming more seriously regarded in the policy/political area, are not easily quantifiable.

There are some issues where a successful outcome has not yet been achieved, but the Office continues to be one of the main organisations pushing for change. Examples include repeal of Section 59 of the Crimes Act allowing 'reasonable force' to be used on young people; the holding of young people in custody in police cells, and serving time in adult prisons.

Over the Office's history, successive Commissioners and staff have dealt with many thousands of individual complaints and enquiries initiated by a phone call or letter. These have covered most matters affecting the care and protection of children. The outcome has often been a significant improvement in the position of an individual child or young person. While too numerous to document here in full, examples include mediating between a Board of Trustees and a student over some material written in a school magazine, and assisting with the return of a child to New Zealand after the child's father had kept the child in Australia longer than originally agreed.

Specific examples where action by the Office, either acting alone or in collaboration with others, impacted on policy, procedures or legislation affecting young people include, but are by no means limited to, the following:

- Investigations that helped clarify laws or policies affecting young people. Examples include the Police 'kiddy-sweep' operation in Auckland's Queen Street which was not subsequently repeated, strip-searching of high school students, and cases of bullying and other physical and sexual abuse of students at school.
- Guidelines developed for identifying, preventing and dealing with the abuse of children in institutional settings.
- 'No hitting' campaign undertaken for over a decade which raised awareness of alternative methods to violence in disciplining children.
- Policy/procedural changes relating to young people in residential care facilities.
- Reform (in attitude, law and practice) towards non-confrontational determination of child custody and access after parental separation.
- Research on aspects of the operation of the Act 1989 which distinguished between facts and fallacies. This found that the police were not, as had been suggested, walking away from dealing with juvenile crime because the Act was causing them difficulties. The types of offences and ages of young offenders were very similar both before and after the passing of the Act. Parents were attending FGC's, taking responsibility and requiring young people to be accountable for their actions, rather than the reverse.
- Principles of informed consent to medical procedures for intellectually disabled persons established.
- A series of meetings chaired that set up the successful Cot Death Prevention Programme.
- Development and improved functioning of Care and Protection Panels.
- Clearer guidelines and procedures for Boards of Trustees in suspension and expulsion cases.
- State agencies and social work practice influenced as a result of the investigations of child killings, as in the cases of Craig Manukau and James Whakaruru. The Commissioner would now be notified of the death of every child who had been known to the Children, Young Persons and Their Families Agency.
- Guidelines developed to assist schools with the recognition, prevention and management of young people at risk, influenced by a Commissioner's report on the suicides of two young friends attending a secondary school.
- Schools re-examined their policies in hostel management and other areas after an investigation of secondary school bullying and violence.
- Concept of social workers in schools promoted.
- Information developed and disseminated informing students of their rights at school.

- Broadcasting Standards Authority clarified privacy principles when broadcasters are involved with children to ensure broadcast is in the best interests of the child.
- Telephone service initiated to provide parents with legal information about school matters.
- Community based regional child advocacy service developed.
- Needs of children with parents in prison investigated.
- Changes recommended to the way young people are assessed and monitored followed investigation of suicides of young people in prison.
- Clarification of matters needing consideration when children are required to give evidence as witnesses in a court.
- Clarification of child and parent rights related to a child's right to medical treatment when parents and medical specialists disagree.
- Greater awareness by political parties of the needs and rights of children.
- Children's lobby group developed.
- Information on the cost of children reviewed.
- A Young People Reference Group initiated to provide a young person's voice to the work of the Office.
- The importance of fathers in families emphasised.
- Court cases involving children summarised to highlight the way in which UNCROC was increasingly being accepted as relevant to New Zealand law.
- Procedures proposed for dealing with suspected use of prohibited substances in schools.
- A New Zealand edition of UNCROC, published with UNICEF and, with NIE, a kit for schools informing children of the Convention's provisions.
- Child Youth and Family Service accepts that International Students in need of care and protection are its responsibility.
- Reference Group established to provide a safe emotional and physical environment for students in school boarding hostels.
- Advertising Standards Codes of Conduct revised. Codes now contain references to UNCROC and the relevant articles.
- Successful complaints to Broadcasting Standards Association over portrayal of children on TV has led to television companies reviewing programmes involving children with increased sensitivity.
- New Zealand Children's Day maintained as an annual event following advocacy by the Office.

- Interests and rights of children promoted through meetings with relevant interest groups. For example, assisting the journalist training organisation with a training day for journalists, using examples to illustrate the portrayal of children in the media.
- Child Youth and Family Policy clarified leading to a 15-year-old refugee boy whose immigration status was under consideration being let out of detention and into the care of foster parents.
- Recognition of the role of grandparents heightened after Office advocated increased financial support for grandparents who care for their grandchildren.
- Commissioner's on-site visits to regional branches of Child Youth and Family have contributed to improvements to services when there have been problems. Examples include steps taken to increase the number and type of caregivers in Northland and an increase in the number of social workers on the West Coast.

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This quarterly publication is a valuable source of information about issues and research activity the Office is involved in.

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See acknowledgements.

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Index