



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 5**

**STANDING COMMITTEE ON LEGISLATION  
PARENTAL SUPPORT AND RESPONSIBILITY BILL  
2005**

Presented by Hon Graham Giffard MLC (Chair)

November 2006

## STANDING COMMITTEE ON LEGISLATION

**Date first appointed:** 17 August 2005

**Terms of Reference as at the date of referral of the Bill:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

**“4. Legislation Committee**

- 4.1 A *Legislation Committee* is established.
- 4.2 The Committee consists of 5 Members.
- 4.3 The functions of the Committee are to consider and report on any Bill referred by the House or under SO 125A.
- 4.4 Unless otherwise ordered -
- (a) the policy of a Bill referred under subclause 4.3 may be considered by the Committee but only to the extent that the Committee is satisfied the provisions of the Bill, as referred, are consistent with that policy and that the legislative intent can be given practical effect;
  - (b) any amendment recommended by the Committee must be consistent with the policy of a Bill.
- 4.5 In this order “**policy of a Bill**” is its scope and purpose ascertained from the Bill’s provisions, but reference may be had to any document or statement or other information that may assist in clarifying the intended legislative effect or construing the application or interpretation of any provision.”

**Members during this reporting period:**

Hon Graham Giffard MLC (Chair)	Hon Peter Collier MLC
Hon Giz Watson MLC (Deputy Chair)	Hon Sally Talbot MLC
Hon Ken Baston MLC	

**Staff during this reporting period:**

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## GLOSSARY AND ACRONYMS

ALSWA	The Aboriginal Legal Service of Western Australia Inc. This is a community based organisation that provides legal advice and representation to Aboriginal and Torres Strait Islander individuals and groups in a wide range of areas throughout Western Australia via 17 regional offices and one metropolitan office
APS	The Australian Psychological Society. This is the largest professional membership association of psychologists in Australia, representing the interests of 14,500 psychologists. One of the roles of the APS is to support policy development within Government and other organisations whose work may impact upon the psychology profession
CEO	Chief Executive Officer
CRO	Conditional Release Order
DCS	Department of Corrective Services (formerly the Department of Justice)
DCD	Department for Community Development
DET	Department of Education and Training
Gordon Inquiry	S Gordon, K Hallahan, & D Henry, (2002) Final Report, <i>Putting the picture together. Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities</i> , Department of the Premier and Cabinet WA, July 31 2002
Indigenous Psychological Services	This provides psychology and mental health specific services for Aboriginal people throughout Australia. The IPS mission statement is: “To provide the highest quality, culturally appropriate, mental health service to Aboriginal (Australian) people, that directly affects their social and emotional well being. This will be achieved through the provision of training, community based interventions, clinical, psychological assessment and research services.”
Kimberley Aboriginal Medical Services Council Inc	This is a health resource body for a group of independent Aboriginal community controlled health services in the remote Kimberley region of Western Australia

Ministerial Advisory Council on Child Protection	This was established by the Hon Sheila McHale, Minister for Community Development in January 2003. It comprises an Independent Community Chairperson, six community representatives and six government representatives
OCP	Office of Crime Prevention
RPA	responsible parenting agreement
RPO	responsible parenting order
Telethon Institute for Child Health Research	Its mission is to improve and to promote the health and well-being of all children through multidisciplinary research
The Salvation Army, Western Australia Division	This is an international movement and an evangelical part of the universal Christian Church
TSI	Torres Strait Islanders
WACOSS	The Western Australian Council of Social Services Inc. This is the peak council of community service organisations and individuals in Western Australia. WACOSS is part of a national network consisting of the Australian Council of Social Services and the State and Territory Councils of Social Service, who assist low income and disadvantaged people Australia wide
WALRC	Western Australian Law Reform Commission
YACWA	The Youth Affairs Council of Western Australia. A peak body for the non-Government youth sector in Western Australia and is a membership based organisation with state-wide representation of a wide variety of people who work with and for young people
YLS	The Youth Legal Service Inc Western Australia. This is a community legal centre that has been operating since 1985. It provides services to meet the needs of young people dealing with the law and legal system

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**EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE**  
**REPORT OF THE STANDING COMMITTEE ON LEGISLATION**  
**IN RELATION TO THE**  
**PARENTAL SUPPORT AND RESPONSIBILITY BILL 2005**

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**EXECUTIVE SUMMARY**

- 1 The Legislative Council instructed the Standing Committee on Legislation (**Committee**) to consider the policy behind the Parental Support and Responsibility Bill 2005 (**Bill**) in addition to its normal practice of scrutinising the Bill's legislative provisions.
- 2 The Committee found broad community support for the concept of responsible parenting agreements in response to both the Office of Crime Prevention's Discussion Paper and during hearings into the Bill. However, in the majority of cases this support did not extend to responsible parenting orders. Many stakeholders preferred non-legislative means of responding to irresponsible parenting.
- 3 The Committee explored the effect of the Bill on Aboriginal families and noted that concerns have been raised about the cultural appropriateness and acceptability of responsible parenting agreements and responsible parenting orders for some Aboriginal families. The Committee acknowledges that the Bill, in its current form, is likely to impact disproportionately on Aboriginal families. However, the Committee is encouraged by the evidence of Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, that "*getting the process of engagement and implementation correct*"<sup>1</sup> with Aboriginal families has the potential to make the Government's *Responsible Parenting Initiative* effective.
- 4 Based on the United Kingdom's experience, the support and assistance given to parents as well as the process by which parenting services are delivered will be crucial in ensuring the successful implementation of the Bill.
- 5 The Committee supports responsible parenting agreements in Part 3 of the Bill but is divided on the inclusion of responsible parenting orders in Part 5. A

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<sup>1</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p3.

majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs) recommend that Part 5 of the Bill be opposed. In the event this recommendation is not agreed to, the Committee has made further comment on specific clauses in Part 5 to assist debate.

- 6 A minority of the Committee (Hons Graham Giffard and Sally Talbot MLCs) recommend that Part 5 of the Bill be passed.
- 7 During the inquiry a number of issues were raised with the Office of Crime Prevention resulting in proposed amendments which the Committee understands the Government will move in the name of the Parliamentary Secretary representing the Minister for Community Development.

## RECOMMENDATIONS

- 8 Recommendations are grouped as they appear in the text at the page number indicated below. The recommendations are presented in statutory form in **Appendix 1**.

Page 34

**Recommendation 1: The Committee recommends that clause 5 of the Parental Support and Responsibility Bill 2005 include the following definition.**

**Clause 5**

**Page 5, after line 9 - To insert -**

“

**For the purposes of this section, “responsibility” includes but is not limited to all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.**

”.



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**Recommendation 2: The Committee recommends that clause 9 of the Parental Support and Responsibility Bill 2005 be amended in the following manner:**

**Clause 9**

**Page 6, after line 26 - To insert -**

“

**(6) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to the guidelines as if the guidelines were regulations.**

”.

Page 64

**Recommendation 3: The Committee recommends that Part 5 of the Parental Support and Responsibility Bill 2005 be opposed in the following manner:**

**Clause 3**

**Page 3, lines 26 and 27 - To delete the lines.**

**Page 4, lines 11 and 12 - To delete the lines.**

**Clause 4**

**Page 4, line 18 - To delete “, government agency or court” and insert instead -**

**“or government agency”.**

**Clause 6**

**Page 5, line 12 - To delete “or a court”.**

**Clause 7**

**Page 5, lines 24 and 25 - To delete “or any responsible parenting order directed towards them”.**

**Clause 8**

**Page 5, line 28 - To delete “or a court”.**

**Clause 9**

**Page 7, line 5 - To delete “or responsible parenting order”.**

**Clause 12**

**Page 10, lines 3 to 16 - To oppose the clause.**

**Clause 13**

**Page 10, line 17 to page 11, line 12 - To oppose the clause.**

**Clause 14**

**Page 11, line 13 to page 12, line 13 - To oppose the clause.**

**Clause 15**

**Page 12, lines 14 to 18 - To oppose the clause.**

**Clause 16**

**Page 12, line 19 to page 13, line 2 - To oppose the clause.**

**Clause 17**

**Page 13, lines 3 to 27 - To oppose the clause.**

**Clause 18**

**Page 13, line 28 to page 15, line 22 - To oppose the clause.**

**Clause 19**

**Page 15, line 23 to page 16, line 3 - To oppose the clause.**

**Clause 20**

**Page 16, lines 4 to 28 - To oppose the clause.**

**Clause 21**

**Page 17, lines 2 to 13 - To oppose the clause.**

**Clause 22**

**Page 17, lines 14 to 28 - To oppose the clause.**

**Clause 23**

**Page 18, lines 1 to 11 - To oppose the clause.**

**Clause 24**

**Page 18, lines 12 to 30 - To oppose the clause.**

**Clause 25**

**Page 19, lines 2 to 8 - To oppose the clause.**

**Clause 26**

**Page 19, lines 9 to 12 - To oppose the clause**

**Clause 27**

**Page 19, lines 13 to 22 - To oppose the clause.**

**Clause 28**

**Page 19, line 23 to page 20, line 3 - To oppose the clause.**

**Clause 29**

**Page 20, lines 4 to 21 - To oppose the clause.**

**Clause 30**

**Page 20, line 22 to page 21, line 7 - To oppose the clause.**

**Clause 31**

**Page 21, lines 8 to 20 - To oppose the clause.**

**Clause 32**

**Page 21, line 21 to page 22, line 4 - To oppose the clause.**

**Clause 33**

**Page 22, lines 5 to 7 - To oppose the clause.**

**Clause 35**

**Page 23, line 9 to page 24, line 3 - To oppose the clause.**

**Clause 36**

**Page 24, lines 11 to 15 - To delete the lines.**

**Clause 41**

**Page 28, line 4 to page 29, line 26 - To oppose the clause.**

**Clause 42**

**Page 30, line 2 to page 31, line 6 - To oppose the clause**

**Clause 43**

**Page 31, lines 20 to 26 - To delete the lines.**

**Page 32, lines 1 to 17 - To delete the lines.**

**Long Title**

**Page 1, lines 6 to 8 - To delete - “responsible parenting orders, to make consequential amendments to the *Children’s Court of Western Australia Act 1988* and the *Young Offenders Act 1994*, and”**



# CHAPTER 1

## INTRODUCTION

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### REFERENCE

- 1.1 The Parental Support and Responsibility Bill 2005 (**Bill**) was referred to the Standing Committee on Legislation (**Committee**) on 30 November 2005, on a motion by Hon Norman Moore MLC, Leader of the Opposition in the following terms but without a reporting timeframe:

*That upon order of the day 121, the Parental Support and Responsibility Bill 2005, being called -*

*(a) the bill be discharged and referred to the Standing Committee on Legislation for consideration and report; and*

*(b) the committee have the power to consider the policy of the bill beyond that provided for in clause 4.4 of Schedule 1.<sup>2</sup>*

### POLICY OF A BILL

- 1.2 Usually, under its terms of reference, the Committee may consider the policy of any referred bill but only to the extent that the Committee is satisfied its provisions are consistent with that policy and that legislative intent can be given practical effect. However, this restriction is always subject to the Committee being otherwise ordered to consider the policy of a bill. In the present case, the Committee has been expressly empowered to consider policy.
- 1.3 During this inquiry the Legislative Council amended Standing Orders with the result that the Committee's overall terms of reference changed. However the changes did not alter this inquiry's terms of reference or the Committee's mandate for this particular inquiry.

### PROCEDURE

- 1.4 The Committee sought written submissions from the general public by advertising in *The West Australian* and placing details of the inquiry on the parliamentary website at [www.parliament.wa.gov.au](http://www.parliament.wa.gov.au). The Committee wrote to various stakeholders seeking their views on the Bill. A list of those stakeholders is attached as **Appendix 2**.

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<sup>2</sup> Hon Norman Moore MLC, Leader of the Opposition, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 30 November 2005, p7890.

- 1.5 A list of those who made submissions is attached at **Appendix 3**. The Committee conducted public hearings with officers from the Office of Crime Prevention (**OCP**) within the Department of the Premier and Cabinet and other stakeholders. A list of those who attended hearings is attached at **Appendix 4**. The Committee conducted a site visit to Langford House and met with representatives from the South East Metropolitan Area *ParentSupport* Group.
- 1.6 The Committee, being authorised to examine policy, also scrutinised 39 submissions the OCP received from various stakeholders who responded to a Discussion Paper on a legislative proposal for parenting orders in 2004.
- 1.7 The Committee extends its appreciation to all witnesses for their evidence and information. The Committee also acknowledges the services of Hansard in the transcription of evidence.

### **BACKGROUND OF THE BILL**

- 1.8 The Second Reading Speech describes parents as:

*the first and most powerful teachers in every child's life, playing a significant role in shaping opportunities and life outcomes for their children.*

*Some parents, for a variety of reasons, may be unable or unwilling to care for their children; to make sure they go to school, to monitor where they are, and who they are with, whether they are safe; or to manage their behaviour.*

*This bill addresses such incapacity or reluctance by introducing a system of responsible parenting agreements and orders, as part of the Government's Responsible Parenting Initiative.<sup>3</sup>*

- 1.9 The objects of the Bill are to:

- (a) *acknowledge and support the primary role of parents in safeguarding and promoting the wellbeing of children; and*
- (b) *support and reinforce the role and responsibility of parents to exercise appropriate control over the behaviour of their children.<sup>4</sup>*

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<sup>3</sup> Hon Kate Doust MLC, Parliamentary Secretary, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 13 September 2005, p5067.

<sup>4</sup> The Bill, clauses 5(a) and (b).



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1.10 The mechanisms to achieve control are provided for in responsible parenting agreements (**RPAs**) and responsible parenting orders (**RPOs**).



## CHAPTER 2

### POLICY OF THE BILL

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#### CONSIDERING THE POLICY OF THE BILL

2.1 The Second Reading Speech makes it clear that the Bill is to be regarded within the context of the 2004 *Children First Policy*.<sup>5</sup> That policy is part of the *Children First Strategy* developed by the Government in 2003.<sup>6</sup> The *Children First Policy* is premised, amongst other things, on the following:

- every child matters;
- children need to be cared for and nurtured; and
- parents, families and communities are all responsible for the wellbeing and protection of children and young people.

2.2 The *Children First Policy* acknowledges that some Western Australian families may be experiencing social isolation or disadvantage which can lead to a range of complex developmental and social issues. The policy states that “*despite considerable effort and support, some families are finding it hard to provide for their children’s physical, social and emotional needs. Children and families in these circumstances require specific and appropriate services*”.<sup>7</sup>

2.3 At the launch of a new *ParentSupport* service in November 2004<sup>8</sup> the former Premier referred to the then proposed Bill as “*one of a range of initiatives to tackle juvenile crime*”.<sup>9</sup> This view was reinforced by witnesses from the OCP, who described the Bill as a crime prevention strategy and “*one aspect of overall government efforts to deal with public order and community safety issues.*”<sup>10</sup> The crime prevention nature of the strategy is reinforced by the fact that *ParentSupport* operates within police districts

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<sup>5</sup> Hon Kate Doust MLC, Parliamentary Secretary, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 13 September 2005, p5066.

<sup>6</sup> The Children First Strategy was launched in 2003 and may be viewed at: [http://www.socialpolicy.dpc.wa.gov.au/documents/children\\_first\\_strategy.pdf](http://www.socialpolicy.dpc.wa.gov.au/documents/children_first_strategy.pdf).

<sup>7</sup> [http://www.socialpolicy.dpc.wa.gov.au/documents/children\\_first\\_strategy.pdf](http://www.socialpolicy.dpc.wa.gov.au/documents/children_first_strategy.pdf), p4.

<sup>8</sup> This service is the first implementation of proposed family services supporting the objects of the Bill. This particular service aims to make parents more responsible for 6-15 year old children who are offending, engaging in anti-social behaviour or truanting.

<sup>9</sup> Hon Dr Geoff Gallop MLA, Media Statement, 29 November 2004.

<sup>10</sup> Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p2.

aligned to local government boundaries<sup>11</sup> and the advice from OCP that the *Responsible Parenting Initiative* is “an important part of the *State Community Safety and Crime Prevention Strategy (2004)*.”<sup>12</sup>

- 2.4 The Committee noted that although the Bill is contextually linked to the Children First Policy, it is a crime prevention policy aimed at reducing juvenile offending, truanting and anti-social behaviour in stand-alone legislation.<sup>13</sup> The rationale for going beyond social welfare type interventions for managing offending, truanting and anti-social behaviour was best explained by Mr Michael Thorn, Director, OCP, who said:

*what we are doing here is ... recognising that ... welfare-oriented interventions do not always work. There sometimes is a need to take a stronger hand in dealing with particular problems of young people.*<sup>14</sup>

- 2.5 Mr Thorn continued:

*It is pretty widely acknowledged and accepted by the community that it expects parents to be responsible for their children. If they are not, some action should be taken to address that.*<sup>15</sup>

- 2.6 The rationale for introducing RPAs and RPOs was explained by Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP who said:

*It is in the interests of the community, the child and the child's siblings that the parents lift their parenting skills and demonstrate that they have made changes to how they deal with their family. In those instances, [responsible parenting] orders may well be sought by agencies.*<sup>16</sup>

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<sup>11</sup> Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 8 February 2006, p1.

<sup>12</sup> Letter from the OCP, 7 August 2006 attaching a *Report of consultation in east and south east police districts*, p1.

<sup>13</sup> There was some stakeholder opposition to stand-alone legislation. Stakeholders preferred incorporation into the *Children and Community Services Act 2004*. For example, Superintendent Duane Bell, Acting Director, Corporate and Community Development, WA Police Service, *Transcript of Evidence*, 8 March 2006, Judge Denis Reynolds, President, Children's Court of Western Australia, Submission No 4, 27 January 2006 and the DCS, *Transcript of Evidence*, 8 March 2006.

<sup>14</sup> Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p2.

<sup>15</sup> *Ibid*, p17.

<sup>16</sup> Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p15.

**Parental responsibility laws in the United Kingdom**

- 2.7 The Committee noted that parental responsibility laws originated in the United States of America in the 1980s<sup>17</sup> and by 2003 had emerged in Europe and the United Kingdom. Professor John Muncie, Professor of Criminology, The Open University, England, referred to an unequivocal message coming from Europe and most western societies about how “*over the past 20 years there has been a dramatic shift in juvenile justice policy from discretionary welfare based interventions to various justice based principles and procedures.*”<sup>18</sup> According to Professor Muncie, this shift appears to be driven by “*an assumed new tidal wave of juvenile violent crime.*”<sup>19</sup>
- 2.8 The United Kingdom responded to this ‘assumed new tidal wave’ with a *Crime and Disorder Act 1998* which established 154 multi-disciplinary youth offending teams within existing local authority structures, overseen by a Youth Justice Board. The youth offending teams were charged with the responsibility of preventing offending by children and young persons. At the time and controversially, the *Crime and Disorder Act 1998* reinforced the responsibility of parents to exercise control over their children as a main objective. In section 8, parenting orders require mandatory engagement by the parents of young offenders and truants with various forms of parenting education and support.<sup>20</sup>
- 2.9 The OCP was interested in section 8 type parenting orders and used the concept to “*shape*”<sup>21</sup> a responsible parenting legislative proposal for Western Australia.<sup>22</sup> The OCP advised that in March 2005, representatives travelled to the United Kingdom to examine the operation of that jurisdiction’s 1998 parenting orders legislation.<sup>23</sup> The OCP studied a number of parenting programs associated with youth offending teams and schemes for truants.<sup>24</sup>
- 2.10 The Committee scrutinised the parenting program supporting the United Kingdom’s legislative model in detail at paragraphs 2.25 to 2.27.

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<sup>17</sup> The concept of parental responsibility laws in the USA was constitutionally challenged in *Williams v Garcetti*, 853 P.2d. 507 (1993). However, this was unsuccessful following a series of judgments and appeals which upheld the language of the relevant legislation, finding that the relevant statute set a reasonable standard for parents making attempts to guide and control their children.

<sup>18</sup> John Muncie, (2003), *Juvenile Justice in Europe: Some conceptual, analytical and statistical comparisons; Child Right*, p14.

<sup>19</sup> *Ibid*, p15.

<sup>20</sup> Specifically, section 8(4) requires compliance with a parenting order for a period not exceeding twelve months and to attend, for a concurrent period not exceeding three months and not more than once in any week, counselling or guidance sessions.

<sup>21</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p7.

<sup>22</sup> *Ibid*, p7.

<sup>23</sup> *Ibid*, p7.

<sup>24</sup> In the United Kingdom, truants are called ‘school refusers’.

## Parental responsibility laws in New South Wales

- 2.11 The only other Australian jurisdiction to attempt a stand-alone, parental responsibility law is New South Wales (NSW). In 1994 legislation evolved out of local, ‘law and order’ campaigns in north western NSW towns allegedly “*under siege*”<sup>25</sup> from Aboriginal youth “*running amok*.”<sup>26</sup>
- 2.12 The *Children (Parental Responsibility) Act 1994* (NSW) was replaced by the *Children (Protection and Parental Responsibility) Act 1997* (NSW) after one year of operation and following a poor review.<sup>27</sup> In 1999, the 1997 Act was reviewed with a finding of mixed views about whether the objectives of the 1997 Act in relation to Parts 2 and 3, remained valid. The objectives were to reduce juvenile crime, make families responsible for the criminal behaviour of their children and address the role of family dysfunction in causing juvenile crime. Part 2 provides for actions a court can take when it finds a child under 18 guilty of an offence, such as requiring undertakings by the child or parent, fining a parent or family counselling. Part 3 provides for the removal of children at risk under 16 from public places in operational areas declared by the NSW Attorney General.
- 2.13 The 1999 review also found poor uptake. For example, only 10 percent of Magistrates had used Part 2 mechanisms.<sup>28</sup> The review noted that Magistrates utilised youth conferencing under the *Young Offenders Act 1997* (NSW) rather than the parental responsibility provisions. One Magistrate, who ordered family counselling under section 8<sup>29</sup>, commented that a court was: “*unlikely to have information as to the specific counselling resources available*”.<sup>30</sup> The conclusion of the 1997 review raised

<sup>25</sup> Gus Bernardi, Special Projects Solicitor, Community Legal Service for Western NSW Inc, *Recasting Old Solutions to Old Problems*, *Alternative Law Journal*, Vol 23, No.3, June 1998, p112.

<sup>26</sup> *Ibid*, p112.

<sup>27</sup> An Evaluation Committee established in May 1995 to review the 1994 Act, comprised a range of government and non government representatives. It found, amongst other things, that the Act did nothing to prevent or reduce juvenile crime or address the causes of offending; did nothing substantial to make families responsible for the criminal behaviour of their children; and had unclear mechanisms for enforcement. See Legislation & Policy, Attorney General’s Department, 2001, “*Review of the Children (Protection and Parental Responsibility) Act 1997, Part 2: Parental Responsibility*”, pp4-5. One provision of the 1994 Act gave the courts power to compel parents to take responsibility for the criminal actions of their children.

<sup>28</sup> However, only 39 of 131 Magistrates completed the survey. Report, NSW, *Children (Protection and Parental Responsibility) Act 1997*, Coordination and Evaluation Committee, p7.

<sup>29</sup> Section 8 states: “(1) *Before a court requires a person to undergo counselling ... the court must: identify an appropriate professional counsellor ... to provide the counselling, and (b) ascertain from the counsellor ... whether or not the counsellor ... is able to provide, and consents to being nominated by the court as the provider of, the counselling, and (c) determine whether the person will be charged a fee in respect of the counselling and, if a fee is payable, whether the person has the financial capacity to pay the fee or is eligible for government assistance in relation to the provision of the counselling. (2) A court is not to require a person to undergo counselling if, in the opinion of the court, the person would suffer undue financial hardship as a consequence of undergoing the counselling.*”

<sup>30</sup> NSW, *Children (Protection and Parental Responsibility) Act 1997*, Coordination and Evaluation Committee, p10.

serious questions about whether the notion of parental responsibility is an appropriate means to secure a reduction in juvenile crime.<sup>31</sup>

- 2.14 Given the problems with the NSW legislation, the Committee was advised that the OCP disregarded NSW as template legislation for a Western Australian proposal. According to the OCP, NSW is now moving towards proposing legislation similar to the Western Australian Bill.<sup>32</sup>

### The parenting process

- 2.15 Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, explained that there is “*clear evidence that parenting is a critical issue in the cause of crime*”<sup>33</sup> and cited research by Dr Don Weatherburn, Director, NSW Bureau of Crime Statistics and Research<sup>34</sup> as authority for this view.
- 2.16 Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, confirmed this view. Professor Silburn explained that Western Australian research through the WA Child Health Survey and, more recently, the Aboriginal Child Health Survey shows strong evidence that: “*one of the major pathways into offending is through the aspects of parenting that are probably best described as more neglectful.*”<sup>35</sup> ‘Neglectful’ in this sense means poor parental supervision and inadequate parent-child interaction rather than parenting in which harsh and inconsistent punishments predominant.<sup>36</sup>
- 2.17 The Committee noted research by Dr Weatherburn and Ms Bronwyn Lind in 1998 indicated how “*economic and social stress exert their effects on crime by disrupting the parenting process.*”<sup>37</sup> Their earlier research in 1997 demonstrated that: “*economic stress increased juvenile participation in crime because it disrupts the parenting*

<sup>31</sup> NSW, *Children (Protection and Parental Responsibility) Act 1997*, Coordination and Evaluation Committee, p20.

<sup>32</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 8 February 2006, p16.

<sup>33</sup> Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p2.

<sup>34</sup> Also Adjunct Professor Don Weatherburn, School of Social Science and Policy at NSW University.

<sup>35</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p2.

<sup>36</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research *Transcript of Evidence*, 22 March 2006, pp5-6. Dr Weatherburn refers to four categories of parenting factors that are related to delinquency. These are: (1) Neglect: [Poor parental supervision, Inadequate parent-child interaction]. (2) Conflict and discipline: [Nagging, Harsh, erratic or inconsistent discipline]. (3) Deviant parental behaviours and attitudes: [Parental criminality, Parental violence or tolerance of violence]. (4) Family disruption: [Chronic spousal conflict, Marriage break up].

<sup>37</sup> Dr Don Weatherburn and Ms Bronwyn Lind, ‘On the Epidemiology of Offender Populations’, *Australian Journal of Psychology*, Vol 49, No 3 pp 169-175.

*process thereby rendering juveniles more susceptible to delinquent peer influence.*<sup>38</sup>

The policy implication from Weatherburn and Lind's research was the need for improvements in the quality of parenting. They suggested three ways to reduce offending:<sup>39</sup>

- reduce the level of economic stress (by macro economic or macro social policy);
- prevent geographic concentration of poverty, so as to attenuate the influence of delinquent peers, (again by macro economic or macro social policy); and
- introduce family and child support programs designed to prevent social and economic stress exerting disruptive effects on the parenting process.

2.18 In 1998 Weatherburn and Lind stated that the introduction of family and child support programs:

*required changes to policy in areas such as community services, school education and public health rather than changes to law enforcement and sentencing policy.*<sup>40</sup>

2.19 Dr Weatherburn repeated these suggestions in his latest book, *Law and Order in Australia, Rhetoric and Reality*, published in 2004, where he recommended much higher levels of investment in effective child abuse and neglect programs.<sup>41</sup>

2.20 The Bill is premised on early intervention parenting programs<sup>42</sup> such as Dr Weatherburn suggests but is placed within a coercive legal framework rather than within traditional social welfare services delivered by government agencies and non government organisations.

### **Thematic views of Stakeholders**

2.21 The Committee noted that the majority of stakeholders who provided submissions raised concern either about the coercive elements of the Bill or were of the view that the legislation was unnecessary; preferring increased resourcing to existing parenting

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<sup>38</sup> Dr Don Weatherburn and Ms Bronwyn Lind, 'Poverty, Parenting, Peers and Crime Prone Neighbourhoods', *Australian Institute of Criminology, Trends & Issues in crime and criminal justice*, No.85, April 1998, p4.

<sup>39</sup> Ibid, pp5-6.

<sup>40</sup> Ibid, p6.

<sup>41</sup> Dr Don Weatherburn, *Law and Order in Australia, Rhetoric and Reality*, The Federation Press, Sydney, 2004, p212. At p179, Dr Weatherburn referred to "a most encouraging discovery in recent years as being the realisation that it is possible to intervene directly in the lives of children and their families in ways that substantially reduce the risk and depth of their involvement in crime."

<sup>42</sup> The Second Reading Speech states at page 2: "Importantly, this legislation will allow us to work with the families of children under 10 years of age."



programs and/or funding of new projects.<sup>43</sup> Judge Denis Reynolds, President of the Children's Court, the court where applications for RPOs will be brought, said:

*The programs put in place to support the proposed legislation are excellent and should be commended and supported. However I don't think that the proposed legislation is necessary for such practical supports to be put in place.*<sup>44</sup>

2.22 The following themes emerged from stakeholders through written submissions and during public hearings:

- The Youth Legal Service Inc Western Australia (**YLS**), the view that the State has a role in assisting parents to understand their responsibilities in relation to the setting and enforcing of behavioural boundaries for children, but this is best brought about by therapeutic and counselling approaches rather than court driven interventions.<sup>45</sup>
- Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, the view that parenting agreements and orders violate strongly held assumptions about what is good for children and the role of families in supporting their development.<sup>46</sup>
- The Youth Affairs Council WA Inc (**YACWA**), the view that using punitive measures to improve the parenting of children and young people is ineffective, and in many cases result in the worsening of family relationships, and the further marginalisation of some of the most disadvantaged members of the community.<sup>47</sup>
- The Western Australian Council of Social Services Inc (**WACOSS**), the view that adding a questionable workload onto the processes of the courts and

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<sup>43</sup> For example, Submission No 2 from the YLS, 23 December 2005, p5. Also Mr Henry Councillor, CEO, Kimberley Aboriginal Medical Services Council, *Transcript of Evidence*, 19 April 2006, pp6-7.

<sup>44</sup> Submission No 4 from Judge Denis Reynolds, President, Children's Court of Western Australia, 27 January 2006, p5.

<sup>45</sup> Submission No 2 from the YLS, 23 December 2005, p6. In a similar vein, the APS said it "*questions the role of the state in a modern parliamentary democracy in using coercion as a means of improving the skills of parents to facilitate good behaviour in their children.*" See: Submission No 9 from the APS, 6 February 2006, p3.

<sup>46</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p1.

<sup>47</sup> Submission No 3 from YACWA, 31 January 2006, pp2-3.

looking to it to solve entrenched social problems is not helpful either to the justice system or the broader community.<sup>48</sup>

- The Salvation Army, the view that legislators and public policy makers need to take a shared social responsibility perspective in the seeking of solutions rather than one of blame which places undue pressure on sectors of the community already under considerable pressure.<sup>49</sup>
- The Aboriginal Legal Service of Western Australia Inc (ALSWA), the view that the majority of parents want to parent well and would take up help where necessary if it was available. A legislated process to coerce parents is unnecessary. For that minority who do not want to parent, the care and protection process may be used as a safer alternative for those children.<sup>50</sup>
- YACWA evidence that international research shows it is difficult for stressed families to benefit from parenting programs when they are faced with multiple disadvantages. Whatever the model of a parenting program and whether attendance of it is made voluntary or compulsory, parenting programs undertaken by families that are dealing with multiple disadvantages have only a minimal effect.<sup>51</sup>
- Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, the view that the legislation will be useful in sending a strong message to society that parents of children who get themselves into trouble can be supported and can have access to appropriate support. The major merit is assisting parents to cross the threshold into a therapeutic relationship that can improve key aspects of family functioning that will reduce the likelihood of behaviours getting out of control.<sup>52</sup>

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<sup>48</sup> Submission No 7 from WACOSS, 2 February 2006, p3. Submission No 9 from the APS, 6 February 2006, p3.

<sup>49</sup> Submission No 8 from the Salvation Army, 3 February 2006, p2.

<sup>50</sup> Submission No 5 from ALSWA, 25 January 2006, p4. Also note Submission No 4 from Judge Denis Reynolds, President, Children's Court of Western Australia, 27 January 2006, p6. There, Judge Reynolds said: "*If the point has been reached where a parental responsibility order should be made then there would also be serious protection issues in relation to the child*".

<sup>51</sup> Ms Karyn Lisignoli, Executive Officer, YACWA, *Transcript of Evidence*, 8 March 2006, p6, citing Patrica Moran, Deborah Ghate and Amelia van der Merwe, 'What Works in Parenting Support? A Review of the International Evidence, Department for Education and Skills', *Research Brief*, No: RB574, September 2004.

<sup>52</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p3.

- ALSWA, the view that punishment against children will occur if parents are subjected to court processes as a result of the child's behaviour.<sup>53</sup>
- Mr Henry Councillor, Chief Executive Officer (CEO), Kimberley Aboriginal Medical Services Council, the view that an RPA or RPO is something that people in the Kimberley (for example) "*will not take seriously because they do not actually have anything to lose*".<sup>54</sup> For example, in Ngallagunda<sup>55</sup>, an RPA or RPO will mean nothing to a parent because the school and community closes down for about six months of the year, due to weather conditions and law time seasons. The relevance of an RPA or RPO does not apply in those particular areas.<sup>56</sup>
- Young people interviewed by YACWA, the view that young people's behaviour problems are attributable to a diversity of factors. Blaming or punishing parents for a young person's behaviour is unfair and young people should have to take responsibility for their actions.<sup>57</sup>

### **Themes expressed by Stakeholders during the OCP's Discussion Paper phase**

- 2.23 As noted at paragraph 1.6, the Committee scrutinised 39 publicly available submissions from stakeholders who responded to the OCP's Discussion Paper on the concept of parenting responsibility laws in 2004.<sup>58</sup>
- 2.24 Amongst other things, these submissions provided feedback to the OCP about the coercive elements of the legislative proposal. The Committee noted that the vast majority of stakeholders (30 out of 39) who responded to the Discussion Paper were supportive of voluntary engagement with parents through increased resources to welfare oriented parenting programs, but against the introduction of coercive parenting orders through the criminal justice system.

### **The United Kingdom model**

- 2.25 As stated at paragraph 2.9, the United Kingdom's parenting order concept was used to 'shape' a responsible parenting proposal for Western Australia.<sup>59</sup> Underpinning the

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<sup>53</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p6.

<sup>54</sup> Mr Henry Councillor, CEO, Kimberley Aboriginal Medical Services Council, *Transcript of Evidence*, 19 April 2006, p4.

<sup>55</sup> This is an Aboriginal community on the Gibb River Road.

<sup>56</sup> Mr Henry Councillor, CEO, Kimberley Aboriginal Medical Services Council, *Transcript of Evidence*, 19 April 2006, p4.

<sup>57</sup> Letter from YACWA received 18 April 2006, p3.

<sup>58</sup> These submissions are published on the OCP's website at: <http://www.crimeprevention.wa.gov.au/html/pubsall.cfm>, viewed on 20 February 2006.

United Kingdom's legislation was an education and support program called the *Parenting Programme*. The Committee collated the following information from the independent, national evaluation of the *Parenting Programme* undertaken by Ghate and Ramella.<sup>60</sup>

### *Background*

- Parenting orders were piloted from October 1998 and then introduced on a country-wide basis in June 2000. It was innovative because it marked the first formal incursion of the youth justice system into family support provision, formerly the preserve of health and social care agencies.<sup>61</sup> Initially, the *Parenting Programme* was intended to provide services to parents in receipt of a new civil penalty, called a parenting order given to parents of persistent or serious offenders, or truants.
- The key assumption underlying the *Parenting Programme* was that parents whose children are engaging or at risk of engaging in anti-social or challenging behaviour can be supported (or educated/trained) to make changes to the way they interact with their child and that this will help to prevent anti-social behaviour.
- Though the *Parenting Programme* was primarily set up to service the new parenting orders, from the outset there was a strong commitment by workers to offer services to parents on a voluntary basis as well. Workers felt uncomfortable with the idea of 'support by compulsion' and interpreted this to mean that referrals by order should be a last resort.
- From the beginning, the *Parenting Programme* was surrounded by controversy. Most agreed that in principle, offering support and assistance to parents struggling with challenging adolescent behaviour was a good idea. Some believed that 'feckless' parents were renegeing on their responsibility to control their children, and needed to be made to change their ways. However, others took issue with the assumption of a 'parenting skills deficit' that underpinned the *Parenting Programme*, that is, that anti-social behaviour by young people could be remedied by parent training and education. Parents of young offenders usually considered themselves to have problems with life circumstances, or problems with their child's behaviour, but did not

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<sup>59</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p7.

<sup>60</sup> Deborah Ghate and Marcelo Ramella, *Positive Parenting, The National Evaluation of the Youth Justice Board's Parenting Programme, June 1999 to December 2001*, Policy Research Bureau for the Youth Justice Board, September 2002, [http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive Parenting.pdf](http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive%20Parenting.pdf), viewed 13 February 2006.

<sup>61</sup> *Ibid*, p75.

necessarily accept that they had a problem with parenting. Even more controversial was the introduction of parenting orders, which were widely interpreted by the media, child care professionals and parents themselves as a dangerous widening of the gateway into the criminal justice system. Parenting orders were portrayed by the media as punishment for ‘bad parents’, and many parents initially experienced the orders in these terms, feeling a very real sense of stigma and anger at being called to account for the crimes of their children.<sup>62</sup>

### *Statistics*

- During the evaluation period from March 2000 to September 2001, 4,097 parents were referred to 34 projects. Two thirds were voluntary referrals, outnumbering court ordered ones which comprised just over one in six (16 percent or 656) of all referrals.<sup>63</sup>
- Over 70 percent of all those referred started some kind of parenting intervention. The remaining 29 percent did not take up any service, due to various factors such as: parent in need of mental health support rather than parenting support; parents subsequently declining to take part, service access problems; transport, childminding or time inconveniences and service provision problems (for example, waiting list for joining parenting groups).
- 78 percent of parents/ carers were women. Male participants accounted for just 18 percent of the case load overall. Eighty five percent of those starting an intervention were described as ‘white British’. Parents were more likely to be parenting alone than living with a partner.<sup>64</sup>

### *Parents’ Reactions*

- With respect to the level of engagement of those parents who took up a parenting intervention (that is, the extent to which active participation was sustained beyond initial contact), the data showed that over half of ‘starters’ engaged *fully* with the intervention (1,575 parents, 54 percent). These parents attended all or most of the sessions offered as part of the intervention. On the other hand, 16 percent of starters (460 parents) engaged *erratically* with the intervention and one in ten of them (297 parents) engaged *poorly or not at all*. Ghate and Ramella could not comment on 579 parents (20 percent) due to unclear or unrecorded engagement level.

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<sup>62</sup> Ibid, p75.

<sup>63</sup> Ibid, p15. Of these, 539 cases came from the criminal route, in response to offending by young people (82 percent of all Parenting Orders) and 117 (18 percent of Parenting Orders) came via the educational route, in response to persistent truancy.

<sup>64</sup> Ibid, p19.

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*Findings*

- Anger at being given a parenting order and sent to a parenting service created a barrier to initial engagement with services for some parents. However, the effect did not seem to be ‘fatal’. It may be that workers overestimated if not the degree of initial hostility by parents, then the seriousness of the barrier it presented. The evidence from the evaluation was that a combination of the genuinely supportive ethos of the services, the skills of the project staff, and the parents’ very real need for help and support helped to dissolve these initial reservations.
- Despite the continuing controversy and the fact that the marriage of support with compulsion struck some as uncomfortable, those who attended under parenting orders ended up feeling they had benefited. However, there was a blurred distinction between the operation of ‘voluntary’ and ‘non-voluntary’ referrals to the *Parenting Programme*, because some parents who were recorded as attending voluntarily almost certainly did so under pressure or threat of an order. Ghate and Ramella concluded that it was not possible to be absolutely definite that the *Parenting Programme* might not have worked in just the same way had all referrals been through a non-Court route.
- The research strongly demonstrated that though a parenting order itself may be regarded as punitive, the services offered as a result were generally experienced by parents as entirely supportive and mostly very welcome. If the message that a parenting order is a mechanism for triggering support and help for parents rather than a punishment is conveyed loudly and strongly by all involved, this might help dispel some of the initial fear and anger expressed by parents and help them to arrive at services in a more productive frame of mind.
- Ghate and Ramella were not able to collate systematic quantitative information on the overall number of breach proceedings that were instigated as part of the *Parenting Programme*. Once a project had decided to recommend that proceedings be started against a parent, the matter was handed over to the police for investigation and action. Local evaluators reported that in most cases, the project itself then received little information on the progress of the case, unless staff were called to give evidence if the case was returned to Court. Records were not, therefore, generally available to be consulted. Furthermore, even where projects or youth offending teams themselves did record information about breaches, the length of time that tended to elapse during the process made it hard to quantify the actual number of breaches that took place within the evaluation period.

- Data from 180 parents who reported on communication aspects showed encouraging changes. For example, with respect to physical conflict, there was a statistically significant reduction in the frequency of the parents threatening their child as well as a reduction in the frequency of parents admitting to actually having hit, or thrown something at their child.<sup>65</sup> Parents reported finding the ‘anger management’ techniques that they had been taught extremely helpful, and there were many reports of parents learning to avoid becoming embroiled in escalating conflicts with young people.
- There were statistically significant changes with respect to: (1) parents’ perception of their ability to influence their child’s behaviour. (2) Parents feeling more able to solve problems between themselves and the child without losing their temper. (3) Parents felt more able to get their children to comply with their requests and to take parents’ views and wishes into consideration. However, the data did not find statistically significant changes in parents’ perceptions of their ability to set ‘ground rules’ for the child.
- The data suggests high levels of satisfaction with the *Parenting Programme* and that a crucial element contributing to parents’ satisfaction related to the high quality of the workers who provided the service. Almost all parents reported that they felt staff listened to what they had to say, that workers understood their feelings and that workers were credible.
- By the end of the intervention all sources converge in suggesting high levels of satisfaction and benefit, and though overall, voluntary referrals were somewhat more positive about interventions than court ordered parents, even parents who had been compelled to attend the services were generous in their praise and appreciation. By parents’ own reports, the services had certainly met a need and workers on the whole agreed that they had made a difference, even if they were unsure of the long-term impact of their work. The opportunity to meet and share experiences with others in similar situations was, quite simply, a revelation for some parents, and rapidly became a source of enjoyment as well as support.
- Following a methodological strategy similar to that employed with parents, young people were asked to answer selected questions about their relationship with their parent with respect to: communication, supervision, conflict, and warmth/hostility. Due to the small number of cases available (78 matched pairs) Ghate and Ramella did not obtain many results that were statistically significant, so were not in a position to rule out the possibility that these findings may have happened by chance. Analysis showed that there was some mild evidence of positive change in the above areas and slightly better

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<sup>65</sup> Ibid, p32.

communication and mutual understanding in some respects with their parents. Though there was evidence that led Ghate and Ramella to be confident that the *Parenting Programme* had a positive impact on parents, there was much less evidence to suggest that this had filtered down to young people. Ghate and Ramella found only mild and mostly statistically non-significant evidence of change in the parent-child relationship for young people, and very little sign (by self-report) that young people's own behaviours or attitudes had changed. Local evaluators' reports tended to confirm this equivocal national picture.<sup>66</sup>

- Fifty six percent of 297 young people sampled were reported to have offences that resulted in reconviction and were definitely committed on dates during the one year follow-up period.

### **The National Evaluation's conclusions regarding the *Parenting Programme***

2.26 Ghate and Ramella found that the *Parenting Programme* was:<sup>67</sup>

*clearly successful in having an impact on parents, according to both parents and staff. In the short term at least, participation in the Parenting Programme was associated with positive improvements in parenting skills and parent-child relationships, and with high satisfaction levels.*

*Parents referred by Order and those attending voluntarily showed similar levels of benefit. Further research would, however, be needed to see if the benefits persisted in the longer term. Moreover, even though many parents felt 'reprimanded' when referred to a parenting support project – especially if they had also received a Parenting Order – the supportive (rather than punitive) reality of the projects was successful at dissolving initial reservations.*

*There does seem to be a place, in both policy and practice terms, for Parenting Orders. These may be a powerful way of reaching some parents who might otherwise never manage to set foot over the threshold of a parenting support service. However, a system which privileged a genuinely voluntary route, but with Parenting Orders held in reserve where voluntary engagement had failed might prove more acceptable to family support providers, opinion formers and parents themselves. This would help to reduce the initial barriers to engagement with a service arising out of parents' distress at receiving*

<sup>66</sup> Ibid, p51.

<sup>67</sup> Ibid, pvi.



*a Court Order, and help minimise the number of parents being drawn into the criminal justice system.*<sup>68</sup>

2.27 A major achievement of the *Parenting Programme* was the “*successful establishment of many thriving parent support projects within the context of the youth justice system.*”<sup>69</sup>

2.28 A clear indicator of whether the *Parenting Programme* was successful must lie in the juvenile reconviction rates. Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research told the Committee that the evidence from the United Kingdom’s court and police records about the rates of re-offending is much less conclusive, largely because of the incompleteness of record keeping in the system. Professor Silburn said:

*They had complete data on only a small proportion of cases to make this assessment. Nevertheless, we could see no systematic biases between those on whom they had full information and the overall number of people who went into the system. The 50 percent rate for the prevention of re-offending could be misleading, because we know that from the age of 14, as kids get older and leave school and go to work, rates of offending drop off anyway.*<sup>70</sup>

#### **Committee comment regarding the *Parenting Programme* and the applicability of a similar model in Western Australia**

2.29 The Committee noted that the majority of parents receiving orders and attending *Parenting Programme* interventions were women while data shows most of the offences triggering referral were committed by boys and young men. Ghate and Ramella commented that:

*In a sense, the sins of the sons are being visited on their mothers. Future development of parenting support services within the youth*

<sup>68</sup> The United Kingdom enacted the *Anti-social Behaviour Act 2003* which unlike the *Crime and Disorder Act 1998*, is an early intervention mechanism.

<sup>69</sup> Deborah Ghate and Marcelo Ramella, *Positive Parenting, The National Evaluation of the Youth Justice Board’s Parenting Programme, June 1999 to December 2001*, Policy Research Bureau for the Youth Justice Board, September 2002, [http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive Parenting.pdf](http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive%20Parenting.pdf), viewed 13 February 2006, pvi.

<sup>70</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p2.

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*justice needs to redress the balance, and make sure that fathers are as engaged as mothers.*<sup>71</sup>

- 2.30 The need to engage fathers in parental support programs was the theme of the Mensplace submission to the OCP's Discussion Paper phase.<sup>72</sup> Mensplace pointed out that there is a discriminatory effect when mothers are held more accountable than fathers and that this is undesirable. The Committee considers that service provision aimed at supporting, encouraging and informing fathers of their parental responsibility, even if not involved in the 'day to day care welfare and development'<sup>73</sup> of their children, is necessary so that fathers can engage or re-engage in parenting their children. The Committee noted that in the south east metropolitan region, where *ParentSupport* has been implemented, the role of fathers in families has been identified as a priority issue.<sup>74</sup>
- 2.31 The Committee further noted that in the United Kingdom model, 85 percent of the parents who started parenting interventions were from white ethnic backgrounds, while only four percent were of "black"<sup>75</sup> descent and two percent "Asian".<sup>76</sup> The Committee observed that Ghate and Ramella's statistical results indicated the model successfully intervened with "white British"<sup>77</sup> women but questions whether such a model can be extrapolated to Western Australian parents and in particular Aboriginal parents.

#### *Impact of the Bill on Aboriginal parents*

- 2.32 During the Discussion Paper phase of the parenting orders concept, the Telethon Institute for Child Health Research submitted to the OCP, the Institute's difficulty with applying parenting orders to Aboriginal families. The Institute said that:

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<sup>71</sup> Deborah Ghate and Marcelo Ramella, *Positive Parenting, The National Evaluation of the Youth Justice Board's Parenting Programme, June 1999 to December 2001*, Policy Research Bureau for the Youth Justice Board, September 2002, [http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive Parenting.pdf](http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive%20Parenting.pdf), viewed 13 February 2006, p78.

<sup>72</sup> Mensplace submission in response to the OCP Discussion Paper on Parental Responsibility Orders, undated.

<sup>73</sup> The Bill defines a 'parent' in this way.

<sup>74</sup> Letter from the OCP dated 12 June 2006, p7, which stated, "following community discussions, *Communicare Inc* was encouraged by the Responsible Parenting Initiative to make an application to the OCP to fund a 12 month project aimed at supporting men and more specifically fathers living in the south east metropolitan corridor in their parenting role, especially with children at risk of becoming involved with police and the justice system."

<sup>75</sup> Deborah Ghate and Marcelo Ramella, *Positive Parenting, The National Evaluation of the Youth Justice Board's Parenting Programme, June 1999 to December 2001*, Policy Research Bureau for the Youth Justice Board, September 2002, [http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive Parenting.pdf](http://www.youth-justice-board.gov.uk/Publications/Downloads/Positive%20Parenting.pdf), p20.

<sup>76</sup> Ibid, p20.

<sup>77</sup> Ibid, p20 and Executive Summary, pii.

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*of utmost importance is the differential impact such a system may have on Indigenous populations given the over representation of Indigenous people in detention, on care and protection orders or facing major social, educational and health disadvantage.*<sup>78</sup>

- 2.33 During a Committee hearing, Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, repeated:

*Our key concern is the cultural appropriateness and acceptability of this proposal for Aboriginal families. We see this as the main challenge to this proposal being used properly.*

*The proposal will probably work reasonably well in the metropolitan region, but how it will work in remote areas of the state needs to be worked out very carefully with organisations such as the Aboriginal Legal Service and local community councils. If the design and form of these parenting supports take account of local and cultural ways of effectively supporting those families, it could produce the benefits that are hoped for.*<sup>79</sup>

- 2.34 Ms Wendy Murray, Director, Planning Policy and Review, Department of Corrective Services, (DCS and formerly the Department of Justice) said:

*We are also conscious of the ideas that have been put in place in the United Kingdom. I have been there and looked at them, and found that they are very effective in many ways. I would like to increase the emphasis that we put in our submission on the fact that where good parental support programs that are appropriate to the circumstances of the parents involved are put in place, they can be extremely useful and effective.*

*While my critique of the ability of the process to address issues faced by Aboriginal families and kids stands, the process of putting in good parent support programs is also endorsed by us. It may appear to be conflicting, but the question that needs to be asked is: how can the contracts [RPAs] that engage parents to be involved and to participate in improving the circumstances or their skills and*

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<sup>78</sup> Telethon Institute for Child Health Research and Centre for Aboriginal Medical and Dental Health submission in response to the OCP Discussion Paper on Parental Responsibility Orders, February 2004, p2. Professor Sven Silburn is a Clinical Psychologist with the Child and Adolescent Mental Health Services of the Department of Health and a researcher in developmental health and behavioural epidemiology.

<sup>79</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p3.

*behaviours in relation to bringing up kids best be constructed and delivered with Aboriginal families and kids and with strong Aboriginal community involvement? That is the major question.*

*The orders [RPOs] are a different thing because that is where you head into the process of taking things to court and creating some kind of criminal disposition. It is an issue. It is potentially useful. I see the orders [RPOs] as being potentially useful to drive service provision by government agencies.<sup>80</sup>*

2.35 The Committee noted an echoing of broad stakeholder concern during the inquiry process about the impact of parenting agreements and particularly parenting orders on Aboriginal parents.<sup>81</sup> The Committee considers that this concern is understandable given that Western Australia has the third largest indigenous population in Australia as well as the highest rate of representation in the criminal justice system, proportional to non Aboriginal representation. 66,000 (or 3 percent) of an estimated 1.9 million people residing in Western Australia are indigenous.<sup>82</sup> Yet Aboriginal people make up between 70 and 80 percent of juveniles in our detention centres, while 40 percent of the adult prison population is Aboriginal.<sup>83</sup> The situation is compounded by the fact that:

- country juveniles are over represented compared with metropolitan juvenile offenders;<sup>84</sup> and
- Aboriginal juveniles are under represented in diversionary options.<sup>85</sup>

2.36 In January 2006, the Western Australian Law Reform Commission (WALRC) released a *Discussion Paper on Aboriginal Customary Laws*. The WALRC noted how various inquiries and reports addressing the over representation of Aboriginal people in the criminal justice system have had little impact. The WALRC is of the view that ‘structural racism’ or bias “*must account in part for the disproportionate rate of Aboriginal arrests, detention and imprisonment.*”<sup>86</sup> Structural racism means

<sup>80</sup> Ms Wendy Murray, Director, Planning Policy and Review, DCS, *Transcript of Evidence*, 8 March 2006, p2.

<sup>81</sup> This matter is discussed in greater detail at paragraphs 3.86 to 3.88 where the Committee scrutinises clause 13 of the Bill.

<sup>82</sup> WALRC, *Aboriginal Customary Laws Project 94, Discussion Paper Overview*, Department of Justice, Perth, February 2006, p 3.

<sup>83</sup> *Ibid*, p14.

<sup>84</sup> Submission No 4 from Judge Denis Reynolds, President, Children’s Court of Western Australia, 27 January 2006, p2.

<sup>85</sup> WALRC, *Aboriginal Customary Laws Project 94, Discussion Paper Overview*, Department of Justice, Perth, February 2006, p15.

<sup>86</sup> *Ibid*, p14.

the discriminatory impact of laws, policies and practices rather than individuals' racist attitudes. DCS provided an example of this when it described how Aboriginal children are proportionately more likely to be arrested in regional areas than in metropolitan areas but whether they actually offend more is something the department cannot answer:

*When you canvass non-Aboriginal kids, it seems that the number of minor offences which non-Aboriginal kids commit and for which they do not get picked up is very high. That involves a whole bunch of graffiti, minor shoplifting and minor assault offences. ... There is a range of behaviour that in some places does not get picked up, but in other places might get picked up.<sup>87</sup>*

2.37 It may be possible to extrapolate from the national evaluation of the United Kingdom's model that parenting agreements and orders will work well with non indigenous, white single mothers. However, it is less certain whether they will work for Aboriginal as well as culturally and linguistically diverse single mothers. The Bill, in applying to all Western Australian parents regardless of descent, may result in an unintended, discriminatory effect.

2.38 The view of DCS is that the parenting orders concept:

*will be more likely to target women, ... given that current orders [in the United Kingdom] tend to have been made almost exclusively against women, and given the overrepresentation of Aboriginal youth in the criminal justice system. There will almost certainly be an associated overrepresentation of Aboriginal people on orders.<sup>88</sup>*

2.39 ALSWA referred to well-intentioned, successive Western Australian governments' involvement with family life but:

*the outcome of those good intentions was the stolen generations, the effects of which continue to be felt today. The results of those intentions render Aboriginal and TI families less likely to comply with the proposed bill. That is one of our concerns and it is why we do not think the legislation would work. We consider also that it would be a bitter irony if children who were parented under those previous*

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<sup>87</sup> Ms Wendy Murray, Director, Planning Policy and Review, DCS, *Transcript of Evidence*, 8 March 2006, p10.

<sup>88</sup> Ms Robyn Wells, Director, Community Justice Services, DCS, *Transcript of Evidence*, 8 March 2006, p11.

*arrangements and who carried out what they had learnt on their own families were then penalised under fresh legislation.*<sup>89</sup>

- 2.40 The Committee acknowledges that Aboriginal and Torres Strait Islanders (TSI) families may be resistant to taking up parenting services under the Bill given that on 1 July 2006, the *Responsible Parenting Initiative* shifted from the Department of the Premier and Cabinet to the administration of the Department for Community Development (DCD). According to ALSWA, DCD is “*remembered very strongly [as] the people who took children away until the 1970s.*”<sup>90</sup> Ms Lorraine Allen, Manager, Family Law Unit, ALSWA said:

*DCD is still the welfare department. The welfare department is this big, bad being that our clients have an absolute horrendous level of hostility towards. It may have been until the 1970s that children were removed pursuant to the stolen generation policies that operated at that time; however, it is still DCD that is coming in and removing children from the care of their parents, families and generally people in the community. It is DCD. They take children out of an environment and they say they are at risk, so they put them into another environment. For our clients that environment has to be seen to be almost perfect, but it is not.*<sup>91</sup>

- 2.41 The OCP stated that it is “*very cognisant*”<sup>92</sup> of this issue and that it “*needs to be managed.*”<sup>93</sup> Currently, plans to separate the *Responsible Parenting Initiative* from the ‘welfare tag’ of DCD include:

- having a separate profile and separate service output;
- separate badging of staff so that staff are identified as being from *ParentSupport*. The badge will feature the Western Australian government logo, without any reference to DCD; and
- only certain authorised officers from the *ParentSupport* service being able to apply for RPOs.<sup>94</sup>

<sup>89</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p1.

<sup>90</sup> Ibid, p12.

<sup>91</sup> Ms Lorraine Allen, Manager, Family Law Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p12.

<sup>92</sup> Mr Michael Thorn, Adviser, Crime and Justice, Department of the Premier and Cabinet, *Transcript of Evidence*, 28 June 2006, p3.

<sup>93</sup> Ibid, p3.

<sup>94</sup> Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 28 June 2006, p2 and Mr Michael Thorn, Adviser, Crime and Justice, Department of the Premier and Cabinet, *Transcript of Evidence*, 28 June 2006, p3.

- 2.42 The Committee acknowledges that for a number of reasons, the Bill in its current form is likely to impact disproportionately on Aboriginal families. However, the cultural appropriateness of a United Kingdom model on the Aboriginal parenting process has, to some degree been mitigated by the express requirement in clause 8 of the Bill for a court to perform its functions with cultural and religious sensitivity.<sup>95</sup>

*Cultural sensitivity and Aboriginal awareness training*

- 2.43 YACWA queried what actual strategies will be used to ensure cultural sensitivity.<sup>96</sup> Many submissions referred to the need to be ‘culturally aware’ in developing parenting programs and the *Gordon Inquiry*<sup>97</sup> emphasised the need for persons working with Aboriginal families to undertake cultural awareness training.
- 2.44 Whether the phrase ‘culturally aware’ can translate into precise interventions, procedures and practices remains an enigma. YACWA reinforced this when it said:

*We see a lot of documents and a lot of government policies, statements and acts that talk about government departments being responsive and being culturally appropriate etc and being youth friendly. They are fabulous ideals, but they are very difficult to put into practice.*<sup>98</sup>

- 2.45 The Committee heard evidence from Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, who critiqued the OCP’s *ParentSupport* package before it was piloted. Dr Westerman emphasised the importance of cultural sensitivity in delivering services and said:

*it is well recognised that the paucity of culturally driven empirical models of engagement severely compromises the ability of practitioners and services to articulate how and where to incorporate cultural differences in engagement.*

*When Aboriginal families present to services, outcomes are mostly measured using incomprehensive or restricted measures ... Hence there is often a degree of subjectivity based on a clinician’s level of experience, training and knowledge of cultural practices. This*

<sup>95</sup> Clause 8. The Committee noted the judiciary’s efforts to tackle cultural awareness through applying practices from an ‘Aboriginal Benchbook for Western Australian Courts’, available to all magistrates and judges. WALRC, *Aboriginal Customary Laws Project 94, Discussion Paper Overview*, Department of Justice, Perth, February 2006, p415.

<sup>96</sup> Submission No 3 from YACWA, 31 January 2006, p4.

<sup>97</sup> S Gordon, K Hallahan, and D Henry, (2002) Final Report, *Putting the picture together. Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of the Premier and Cabinet Western Australia, 31 July 2002.

<sup>98</sup> Ms Karyn Lisignoli, Executive Officer, YACWA, *Transcript of Evidence*, 8 March 2006, p2.

*culminates in other problems such as validly and reliably assessing the impacts of specific intervention strategies and overall program aims and objectives.*<sup>99</sup>

2.46 Dr Westerman told the Committee of her own development and testing of a model that focuses on teaching service providers how to engage with Aboriginal families and communities in culturally respectful ways.<sup>100</sup> The Committee is encouraged by the fact that at least one model of engagement is available and goes some way forward in addressing the current paucity of appropriate models.

2.47 The need for cultural awareness training was recently reaffirmed in Proposal 2 of the WALRC's 2005, *Discussion Paper on Aboriginal Customary Law*. The first part of Proposal 2 states:

*That employees of Western Australian government agencies who work directly or have regular dealings with Aboriginal people, be required to undertake cultural awareness training. Such training should include presentations by Aboriginal people and be delivered at the regional level to allow programs to be appropriately adapted to take account of regional cultural differences and customs and concerns of local Aboriginal communities.*<sup>101</sup>

2.48 However, Proposal 2 goes further by stating that:

*consideration should be given to agency-arranged cultural awareness training as a condition of a contract where contractors or subcontractors to any Western Australian government agency are required to work directly or have regular dealings, with Aboriginal people.*<sup>102</sup>

2.49 The Committee requests the Government make cultural awareness training a subject matter for regulations.

2.50 The OCP provided additional information that it had considered Dr Westerman's critique of the *ParentSupport* package and of three recommendations made, chose the one which recommended that the clinical framework be tailored for Aboriginal people through:

<sup>99</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Critique & Comments on the Parent Support Program for the Office of Crime Management (2005)*, p9.

<sup>100</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p11.

<sup>101</sup> WALRC, *Aboriginal Customary Laws Project 94, Discussion Paper Overview*, Department of Justice, Perth, February 2006, Proposal 2, p91.

<sup>102</sup> *Ibid*, p91.



*allocation of a proportion of ParentSupport resources to the development of an Aboriginal specific program that can be researched, developed and tested.*<sup>103</sup>

- 2.51 The Telethon Institute said that it would be essential to see if the experience in the United Kingdom in any way further stigmatises or marginalises ethnic groups and what safeguards have been put in place to ensure the cultural validity of a program.<sup>104</sup> Unfortunately, given the very small statistical sample of ‘other than white parents’ involved in the United Kingdom model, this is impossible to predict.

### **Committee Findings on the Policy of the Bill**

- 2.52 A majority of the Committee (Hons Graham Giffard, Sally Talbot, Peter Collier and Ken Baston MLCs) finds merit in the United Kingdom’s *Parenting Programme* and indeed in any well formulated and resourced parenting project. A majority of the Committee (Hons Graham Giffard, Sally Talbot, Peter Collier and Ken Baston MLCs) also finds merit in DCS’s argument at paragraph 2.34 that the concept of parenting orders could be seen as: “*potentially useful to drive service provision by government agencies,*”<sup>105</sup> particularly in regional and remote communities. However, Hons Peter Collier and Ken Baston MLCs question whether projects and services need to be driven in this manner with the ultimate recourse being the criminal justice system.
- 2.53 A majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs) agrees with the following comment in the submission to the *Office of Crime Prevention: Parental Responsibility Orders* prepared by Dr Helen Milroy, Child and Adolescent Psychiatrist on behalf of the Telethon Institute for Child Health Research, Centre for Aboriginal Medical and Dental Health, University of Western Australia.

*Although the research from the use of Parental Responsibility Orders and Contracts in the United Kingdom is discussed, it requires further scrutiny to evaluate its applicability to WA, especially in regard to how the system fits within the broader framework of social services, justice, education, family and mental health services. It would be essential to see if the experience in the United Kingdom in any way further stigmatises or marginalises ethnic groups and what safeguards have been put in place to ensure its cultural validity. It would also be important to compare this model to outcomes in other countries without these orders and compare different models of*

<sup>103</sup> Letter from Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, 8 June 2006, p4.

<sup>104</sup> Telethon Institute for Child Health Research and Centre for Aboriginal Medical and Dental Health submission in response to the OCP Discussion Paper on Parental Responsibility Orders, February 2004, p2.

<sup>105</sup> Ms Wendy Murray, Director, Planning Policy and Review, DCS, *Transcript of Evidence*, 8 March 2006, p2.

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*intervention. Of utmost importance is the differential impact such a system may have on Indigenous populations given the over-representation of Indigenous people in detention, on care and protection orders or facing major social, educational and health disadvantage.*<sup>106</sup>

*One would also have to question whether there has been a comprehensive evaluation of how our current system of child welfare/protection and family support programmes are working in WA and if any existing programmes are already achieving some of the desired objectives. If a proper stock-take and evaluation of services has not been conducted then imposing a new system may be highly problematic if not premature.*<sup>107</sup>

- 2.54 A majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs) is of the view that Professor Silburn's comment at paragraph 2.28 makes the success or otherwise of the United Kingdom experience questionable.

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<sup>106</sup> The majority of the Committee also noted that in the Institute's submission, Dr Milroy refers to how Professor Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, conducted an "*important discussion and analysis of the United Kingdom data*" and that Professor Silburn's analysis had been included as an appendix in the Institute's submission to the OCP.

<sup>107</sup> Telethon Institute for Child Health Research and Centre for Aboriginal Medical and Dental Health submission in response to the OCP Discussion Paper on Parental Responsibility Orders, February 2004, pp2-3.

## CHAPTER 3

### SPECIFIC CLAUSES IN THE BILL

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#### INTRODUCTION

3.1 The Committee provides the following information and commentary on a number of specific clauses in the Bill to assist the House during debate.

#### **Part 1, clause 3: The definition of ‘CEO Justice’**

3.2 Clause 3 of the Bill contains the following definition:

*“CEO (Justice)” means the chief executive officer of the department principally assisting in the administration of the Young Offenders Act 1994.*

3.3 The Committee noted that the Department of Justice is no longer in existence, having been replaced by the Department of the Attorney General and the Department of Corrective Services. The Committee further noted that the *Administration of Departments, Authorities, Statutes and Votes* published in the *Government Gazette* on 26 May 2006 lists the Minister for Corrective Services as the Minister responsible for the administration of the *Young Offenders Act 1994*.

3.4 The Committee sought clarification of this matter from the OCP and was advised that the Parliamentary Counsel Office will make an amendment to clause 3.<sup>108</sup> The Committee noted that this will result in consequential amendments to clauses 12(1) and 34.

3.5 The Committee observed amendments on Supplementary Notice Paper No 41 Issue No 3 dated 16 October 2006 which rectify the definition.

#### **Part 1, clause 3: The definition of ‘child’**

3.6 Clause 3 defines ‘child’ as meaning “*a person who is under 15 years of age*.”. The Committee sought clarification of the rationale for this definition, given that the NSW legislation defines a child as meaning “*a person who is under the age of 18 years*.”<sup>109</sup>

3.7 The Committee noted that the OCP consulted widely on the decision to fix a particular age. For example, the WA Police Service considered that a child is “*too independent*”

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<sup>108</sup> Tabled paper from the OCP: *Office of Crime Prevention Response to Questions raised by the Standing Committee on Legislation regarding the Parental Support and Responsibility Bill 2005, June 2006, 28 June 2006, p8.*

<sup>109</sup> Section 3, *Children (Protection and Parental Responsibility) Act 1997* (NSW).

after 12 years of age.”<sup>110</sup> Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP explained that consultation with the DCD on the phases of child development revealed that once children move into the 14 to 15 year age group, they are actively seeking to be autonomous. Ms MacWilliam said:

*We would miss the boat if we tried to extend it to 16, 17 or 18 years of age. It is pointless to try to impact on the parents and expect them to be able to impact on children who are becoming increasingly autonomous and independent.*<sup>111</sup>

3.8 Ms Wendy Attenborough, Principal Policy Officer, OCP, explained that the Bill is an early intervention, preventative mechanism, not designed to hold responsible the parents of children aged 16, 17 or 18 who are engaging in entrenched serious offending behaviour. It places a significant emphasis on working with families with children under 10 years of age to assist in the remediation of that behaviour before it becomes entrenched.<sup>112</sup> DCS explained that in the case of Aboriginal children under 10, by the time they arrive at first contact with the justice system they are already multiple offenders compared with non Aboriginal children of the same age.<sup>113</sup> The Committee noted that this focus on the under 10 years cohort may reduce the difference between the two groups.

3.9 The Committee noted that aside from the policy objectives, the decision to fix the age limit at 15 was pragmatically motivated because some 15 year olds are able to live independently of their family after being granted Youth Allowance from Centrelink.<sup>114</sup> As Ms Attenborough explained:

*It was really a recognition of both the capacity of parents to physically control their children in many circumstances once they are in their late teens and the other external policy factors that are not within this jurisdiction.*<sup>115</sup>

<sup>110</sup> Commissioner Barry Matthews, WA Police Service, Response to the Discussion Paper, 19 February 2004, p1.

<sup>111</sup> Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p16.

<sup>112</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p4.

<sup>113</sup> Ms Wendy Murray, Director, Planning Policy and Review, DCS, *Transcript of Evidence*, 8 March 2006, p9.

<sup>114</sup> Centrelink, via a Social Worker, may assess some 15 year olds to be ‘independent’ if it is ‘unreasonable’ for them to live at home. See: [http://www.centrelink.gov.au/internet/internet.nsf/payments/qual\\_ind\\_yal.htm](http://www.centrelink.gov.au/internet/internet.nsf/payments/qual_ind_yal.htm), viewed on 21 February 2006.

<sup>115</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p16.

*Committee Findings*

- 3.10 The Committee noted the Bill's focus on early intervention and welcomes this emphasis. The Committee also observed that the concept of independence in respect of a 'child' is fluid and variable. This factor presented a challenge for the OCP in defining an appropriate age for the delivery of services to parents particularly given the fact that other Western Australian legislation defines a child as being under 18 years of age.<sup>116</sup>
- 3.11 The Committee finds that the rationale for defining a child as meaning "*a person who is under 15 years of age*" in clause 3 is explained adequately by the fact that children, whose parents are being targeted for services under the Bill, are exhibiting independent behaviour by that age.

**Part 1, clause 3: The definition of 'parent'**

- 3.12 Clause 3 defines a parent as one at law, that is, a natural or adoptive parent.<sup>117</sup> The definition is reflective of a nuclear family model. The OCP see this definition as a "*significant constraint*"<sup>118</sup> on the operation of the legislation because it does not capture extended family members exercising day to day responsibility for a child.
- 3.13 The definition is not applicable to the non-nuclear nature of the family unit in Aboriginal society which the WALRC's Discussion Paper on Aboriginal Customary Laws noted as: "*extended with many relatives and often whole communities sharing child rearing responsibilities with the natural parents*".<sup>119</sup> Indigenous culture sees movement of children, either geographically or between or within kinship groups, as beneficial.
- 3.14 ALSWA said that in some ways it applauds Aboriginal extended relatives being excluded from the definition of 'parent'.<sup>120</sup> Although not supportive of the Bill, ALSWA referred to how the Bill has the anomalous effect of being inapplicable to, for

<sup>116</sup> For example, section 3(1), *Children's Court of Western Australia Act 1988* defines a child as meaning, (a) any boy or girl under the age of 18 years; (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years. Similarly, section 3, *Children and Community Services Act 2004* defines a child as a person who is under 18 years of age, and in the absence of positive evidence as to age, means a person who is apparently under 18 years of age. Section 1 of *The Criminal Code* states that a child means (a) any boy or girl under the age of 18 years; and (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years.

<sup>117</sup> That definition for the most part, mirrors "*parent*" in the *Children and Community Services Act 2004*.

<sup>118</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p4.

<sup>119</sup> WALRC, *Aboriginal Customary Laws Project 94, Discussion Paper Overview*, Department of Justice, Perth, February 2006, p68. J Dewar, 'Indigenous Children and Family Law' (1997) 19 *Adelaide Law Review* 217, p222.

<sup>120</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p4.

example, an Aboriginal woman who was ‘given’ a child in a traditional way because she was unable to have children. Such a person could not be called to account even though she is the person with prime responsibility for that child.<sup>121</sup>

### *Committee Findings*

3.15 The Committee finds that the definition of ‘parent’ does not necessarily encompass parenting practices in Aboriginal and TSI cultures.

### **Part 1, clause 3: the absence of a definition of ‘parental responsibility’ and corresponding clause in the Bill**

#### *Defining ‘responsible parenting’*

3.16 Several stakeholders had difficulty defining the concept of parental responsibility<sup>122</sup> noting that it means “*different things to different people*”.<sup>123</sup> Arguably, Australians hold to a set of core parental responsibilities, regardless of their own family and marital histories or conditions. It has been argued by Ms Kate Funder, researcher and author that these include:

- teaching children what is right and wrong;
- looking after children’s education;
- providing love and emotional support;
- protecting children from exposure to violence between parents;
- providing contact with relatives; and
- providing access to sports, clubs, and hobbies.<sup>124</sup>

3.17 The Committee observed that the term ‘parental responsibility’ is not expressed anywhere in the Bill and is therefore not defined, yet the concept of ‘parental responsibility’ permeates the Bill. The Committee noted that neither the United Kingdom legislation nor the *Children (Protection and Parental Responsibility) Act*

<sup>121</sup> Ms Lorraine Allen, Manager, Family Law Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p4.

<sup>122</sup> For example, ALSWA, *Transcript of Evidence*, 8 March 2006, pp4-5. Also Mr Henry Councillor, CEO, Kimberley Aboriginal Medical Services Council, *Transcript of Evidence*, 19 April 2006, p11.

<sup>123</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p3.

<sup>124</sup> Ms Kate Funder, *We hold these truths: a national perspective on parental responsibility*, Paper presented at the 5th Australian Family Research Conference, Brisbane, November 1996. Also available in Family Matters No 45 Spring/Summer 1996 as “*Family law reforms and attitudes to parental responsibility*” See: <http://www.aifs.gov.au/institute/afrcpapers/funder.html>

1997 (NSW) contain a definition. The Committee queried the omission of a definition with Mr Michael Thorn, Director, OCP, who said:<sup>125</sup>

*My observation is that the courts probably, subject to the guidance of the objects of the Act, use their reasonable judgment of the particular circumstance surrounding a case. ... in terms of the public policy people and the service deliverers, we have a fairly good handle on what represents sound parenting. That may not necessarily be able to be captured in some black-letter law.*

- 3.18 The Committee considers that the OCP having a ‘fairly good handle’ on what represents sound parenting is not relevant. As the Bill stands, it is for the Children’s Court to determine what constitutes sound parenting according to law. As Ms Tonia Brajcich, Manager of Legal Services, ALSWA, said:

*the use of Parenting Responsibility [agreements] and Orders to mandate parenting style in the end amounts to parenting by the courts.*<sup>126</sup>

- 3.19 The Committee considered that although recourse may be had to objects and principles clauses, the inclusion of a broad definition of parental responsibility would be useful. The Committee explored various definitions of the term including, “*the exercise by a parent of all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.*” The Committee also noted that section 68 of the *Family Court Act 1997* defines ‘parental responsibility’ in relation to a child as meaning: “*all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.*” That section mirrors both section 61B of the Commonwealth’s *Family Law Act 1975* and section 3 of the *Children and Community Services Act 2004*. Arguably, an identical definition in the Bill may assist the Court.
- 3.20 A majority of the Committee (Hons Graham Giffard, Sally Talbot, Peter Collier and Ken Baston MLCs) concluded that although there is a technical reason for the omission of a definition of ‘parental responsibility’, there is merit in the House debating what is meant by the term. The majority of the Committee acknowledges that no definition is possible at clause 3 but has recommended an amendment to clause 5 to provide a definition of “*responsibility*” in the context of clause 5(b). This definition may assist the Court. Clause 5 with the Committee’s proposed amendment underlined below, reads as follows:

<sup>125</sup> Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p6.

<sup>126</sup> Ms Tonia Brajcich, Manager of Legal Services, ALSWA, ‘The WA Proposed Parental Responsibility Contracts and Orders, An Analysis of their Impact on Indigenous Families’, *Indigenous Law Bulletin*, February 2004, ILB Volume 5, Issue 30, p12.

### 5. Objects

*The objects of this Act are —*

*(a) to acknowledge and support the primary role of parents in safeguarding and promoting the wellbeing of children; and*

*(b) to support and reinforce the role and responsibility of parents to exercise appropriate control over the behaviour of their children.*

*For the purposes of this section, “responsibility” includes but is not limited to, all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.”*

- 3.21 A majority of the Committee (Hons Graham Giffard, Sally Talbot, Peter Collier and Ken Baston MLCs) makes the following recommendation. The statutory changes required to give effect to this are set out in **Appendix 1**.

**Recommendation 1: The Committee recommends that clause 5 of the Parental Support and Responsibility Bill 2005 include the following definition.**

**Clause 5**

**Page 5, after line 9 - To insert -**

“

**For the purposes of this section, “responsibility” includes but is not limited to all the duties, powers, responsibilities and authority which, by law, parents have in relation to children.**

”.

- 3.22 A minority of the Committee (Hon Giz Watson MLC) does not support the inclusion of a definition of “*responsibility*” in clause 5. Hon Giz Watson is of the view that the term parental ‘responsibility’ is not easily defined; that there is significant variation in approaches to parenting amongst Aboriginal, and other culturally and linguistically diverse groups. As a result, there is little consensus on what the term parental ‘responsibility’ means in a practical sense. Hon Giz Watson finds that the evidence of Dr Tracy Westerman, Managing Director, Indigenous Psychological Services demonstrates this point. Dr Westerman described how:



*in remote communities, kids are encouraged to be autonomous and independent, and particularly to have no boundaries and no restrictions, because that is how they learn to be practically competent. However, if we take that set of parenting strategies, or skills, if we like, and put that into an urban context, suddenly the very things that make the kids strong and resilient and enable them to learn very quickly are seen as deficits.*<sup>127</sup>

3.23 Hon Giz Watson finds that it is not the role of the Court or the Parliament to define parental ‘responsibility’.

## **Part 2, Objects and Principles**

3.24 Part 2 contains an objects clause and three guiding principles. The principles are:

- best interests<sup>128</sup> of the child paramount;
- cooperation between government agencies; and
- cultural and religious sensitivity.

3.25 The objects clause reinforces the role and responsibility of parents to appropriately control the behaviour of their children, but the Committee sought clarification of how the paramountcy principle in clause 6 can be reconciled with clause 20(1) which imposes a financial penalty on parents who breach a parenting order. The Committee heard evidence that such a coercive measure may exacerbate existing, dysfunctional parent/child relationships. However, Mr Michael Thorn, Director, OCP, said:

*the likelihood of those circumstances arising are so small that we should not seek to **not** put in place this program and the regime of the legislation that accompanies it.*<sup>129</sup>

3.26 Mr Thorn continued:

<sup>127</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p2.

<sup>128</sup> The ‘best interests’ of persons under legal disability such as children is the guiding principle in a family law context. Under the *Family Law Act 1975* (Cth), “best interests”, in relation to children, are equated generally with notions of “welfare”: *Re B and B* (1997) 142 FLR 430. Courts are required to make decisions with respect to children in their “best interests”. This is a task which necessarily involves looking to the future and all the uncertainties that that involves: *CDJ v VAJ* (1998) 197 CLR 172. The Children First Policy/Children First Strategy states that ‘best interests: “reflects the intention of the United Nations Convention on the Rights of the Child that all children no matter where they live deserve to live in dignity and to be treated according to their best interests.” Western Australia’s Children First Strategy: <http://www.socialpolicy.dpc.wa.gov.au>, (viewed on 13 December 2005), p2.

<sup>129</sup> Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p12.

*The risk that that might further contribute to a breakdown in the relationship between a parent and a child should not be the basis upon which we make a decision about whether an order is sought. We must look at this in a realistic way in the sense of what are the likely outcomes and circumstances, and that must be based on what Western Australia and other places have experienced. Our experience in Western Australia is that we are trying to go to the heart of this particular problem of what is a parent's responsibility. To be afraid to tackle that issue because of some special instances or because of a minority of circumstances or cases would be to fail in our responsibility to deal with the issue.*<sup>130</sup>

- 3.27 The OCP is of the view that clause 18(2)(a) sets a very high threshold of protection before a court can issue an RPO. It states that the court must take into account the “*circumstances of the child's family and the likely effect on those circumstances of making the proposed order.*” However, as ALSWA argued:

*The Bill creates extra hardship for troubled families, including more legal procedures, more adversarial processes than collaboration, difficulty for parents ... potential detention of parents in counselling facilities. Families and children would experience many of these hardships even if the eventual outcome of proceedings was that no order be made.*<sup>131</sup>

- 3.28 Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA said:

*I appreciate that there is a no-order principle behind this, but to get to a no-order you still have to go through the process. This is another experience for the family to go through that will cause problems for the family and, therefore, to the children. It is yet another layer.*<sup>132</sup>

- 3.29 Ms Karyn Lisignoli, Executive Officer, YACWA, explained that it will be very difficult to determine whether a parenting order is in a young person's best interests. “*An order may have severe repercussions for the young person who is very good at keeping secrets and keeping quiet about what is going on in their homes. These young people often have parents who are abusing drugs or taking part in other illegal activity.*”<sup>133</sup> The Committee notes that because the paramount consideration is the

<sup>130</sup> Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p12.

<sup>131</sup> Submission No 5 from ALSWA, 25 January 2006, p12.

<sup>132</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p4.

<sup>133</sup> Ms Karyn Lisignoli, Executive Officer, YACWA, *Transcript of Evidence*, 8 March 2006, p3.

child's best interests, this will necessitate an understanding on the part of the Court that children and young people do not always disclose.

- 3.30 The Committee examined NSW's Evaluation Committee Review (**Review**) findings of the *Children (Protection and Parental Responsibility) Act 1997* (NSW) because section 6 is thematically similar to Part 2 of the Bill.<sup>134</sup> Significantly, that Review found no evidence that the use of Part 2 mechanisms (requiring undertakings by the child or parent, fining a parent or family counselling) had an adverse effect on families.<sup>135</sup> However, the Review did note that serious questions had been raised as to whether the notion of parental responsibility is an appropriate means to secure the objective of reducing juvenile crime.<sup>136</sup> Stakeholders contributing submissions to the Review maintained that the objectives of the NSW Act would be more appropriately and efficiently achieved through non-legislative means.<sup>137</sup>
- 3.31 Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, emphasised the importance of 'process' when questioned by the Committee about the applicability of RPAs and RPOs on Aboriginal families. Dr Westerman said:

*Probably the primary thing is that anything that is worded in terms of responsibility - any legislation, bill or agreement that has the word "responsibility" in it - will be effective only if it gets the process right.*<sup>138</sup>

*The report that was conducted for the Office of Crime Prevention [critiquing the pilot ParentSupport program] went into some fairly specific detail about getting the process of engagement and implementation correct. It can be effective. Certainly from the work that we have done across Australia we know that if we can get the process right, we can pretty much work anywhere and be effective anywhere. The thing that frustrates me is that there is a myth that we*

<sup>134</sup> Section 6 states: "(1) In considering how a child should be dealt with under [Part 2], a court is to have regard to whether the taking of the action under consideration is in the best interests of the child. (2) Without limiting the matters that the court may take into account for the purposes of subsection (1), the court is to consider: (a) the nature of the relationship of the child with the child's parent or parents, and (b) the attitude to the child, and to the responsibilities of parenthood, demonstrated by the child's parent or parents, and (c) the welfare, status and circumstances of the child and of the child's parent or parents."

<sup>135</sup> Report, NSW, *Children (Protection and Parental Responsibility) Act 1997*, Coordination and Evaluation Committee, p13.

<sup>136</sup> NSW Attorney General's independent evaluation of Part 2 for the Evaluation Committee's review, contained within the Report, NSW, *Children (Protection and Parental Responsibility) Act 1997*, Coordination and Evaluation Committee, p20.

<sup>137</sup> Ibid, p12.

<sup>138</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p2.

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*cannot be effective in Aboriginal communities. That is actually not the case.*<sup>139</sup>

### *Committee Findings*

- 3.32 The evaluation of the UK's *Parenting Programme* (discussed at paragraphs 2.25 to 2.27) reveals that a majority of those reluctant parents who attended programs under a parenting order, felt they had benefited from the parenting service.
- 3.33 A majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs), repeats the findings made at paragraphs 2.53 and 2.54. Further, the majority of the Committee notes how Professor Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, identified statistical shortcomings in the United Kingdom's evaluation of its model. Professor Silburn referred to the "*incompleteness of record keeping in the UK system ... [making] evidence from court records and police records about the rates of re-offending much less conclusive.*"<sup>140</sup> The majority of the Committee finds extrapolating the United Kingdom model to Western Australia questionable.
- 3.34 A majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs), acknowledge that although legislation has a role in dealing with truanting, anti-social behaviour and juvenile offending, a legislative response with punitive sanctions in respect of parenting and parental responsibility is neither a suitable nor appropriate response and therefore not in the "*best interests of the child.*"<sup>141</sup>
- 3.35 A minority of the Committee (Hons Graham Giffard and Sally Talbot MLCs) concurs with Ghate and Ramella (the authors of the UK evaluation) that although a parenting order is punitive, the process by which parenting services are delivered has the potential to result in a positive, supportive experience for parents. The minority of the Committee also finds that a legislative response to truanting, anti-social behaviour and juvenile offending which requires parents to make use of a range of parenting services, can be in the "*best interests of the child.*"<sup>142</sup> Based on the United Kingdom's experience, the support and assistance given to parents as well as the process by which parenting services are delivered will be crucial in ensuring the successful implementation of the Bill. The Court, when deciding whether or not to impose the

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<sup>139</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p3.

<sup>140</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p2.

<sup>141</sup> The Bill, clause 6.

<sup>142</sup> The Bill, clause 6.

ultimate coercion, that is, an RPO must take into account the extent to which the relevant government agency has given the assistance provided for in the RPA.<sup>143</sup>

### Community versus parental responsibility

3.36 Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, advocates the insertion of a third object in clause 5 of the Bill to recognise community responsibility similar to the United Kingdom's legislation.<sup>144</sup>

3.37 Professor Silburn explained that the United Kingdom parenting order concept was implemented through measures that recognised families, schools and communities as having: "*a shared responsibility for caring and protecting children and that it is hard for families, schools and the justice system to do this on their own.*"<sup>145</sup> Professor Silburn recommended a third object framed in this way:

*would go a long way to helping the general community be more accepting of the Bill, particularly the disadvantaged sectors of the community.*<sup>146</sup>

3.38 Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, reinforced this 'shared responsibility' view when she said that "*often in [Aboriginal] communities people will see themselves as being responsible, but it might not necessarily be viewed from a Eurocentric perspective as being responsible.*"<sup>147</sup>

3.39 The Committee explored recognising community parenting responsibility in the Bill and noted the following government proposed amendment on Supplementary Notice Paper 41, Issue No 3 dated 16 October 2006 which provides for a fourth guiding principle in Part 2. It states:

*Principle of shared responsibility*

*In performing a function or exercising a power under this Act in relation to a child, a person or a court must have regard to the shared*

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<sup>143</sup> The Bill, clause 18(2)(g).

<sup>144</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p1. The *Crime and Disorder Act 1998* (UK) requires local authorities and the police to come together to review the pattern and extent of crime and disorder in their local area and to implement a strategy for tackling these issues.

<sup>145</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, pp1-2.

<sup>146</sup> *Ibid*, p2.

<sup>147</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p3.

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*responsibility that parents, family and the community have for the wellbeing of the child.*

3.40 The Committee supports the Government's proposed amendment but queries whether the inclusion of this fourth principle is beyond the scope of the Long Title which appears to promote parental, rather than community responsibility for the caring and well being of children.

3.41 The Long Title of the Bill may be compared with the Long Title of the *Children and Community Services Act 2004* which provides that it is "*An Act to confer functions in relation to the provision of social services..., and other matters concerning the wellbeing of children, other individuals, families and communities.*" Section 9 expressly provides for the observance of the following guiding principle:

*(a) that the parents, family and community of a child have the primary role in safeguarding and promoting the child's wellbeing; and*

*(b) that the preferred way of safeguarding and promoting a child's wellbeing is to support the child's parents, family and community in the care of the child.*

3.42 By contrast, the subject matter of the Bill is parental responsibility with government provided support services to enhance parenting skills, not sharing that responsibility with the community.

3.43 The Committee draws to the attention of the House its comment at paragraph 3.116 that for an RPO application to proceed, there must be a nexus with a *ParentSupport* provided service through either:

- a department;
- a State agency or instrumentality; or
- a body or the holder of an office, post or position, established or continued by or under a written law for a public purpose.

3.44 The requisite nexus between clause 3 (which provides the definition "*government agency*") and clause 18(2) (the clause which prescribes nine factors the Court must take into account before making an RPO and its content), appears to suggest that a community based parenting service contracted by the OCP to deliver a *ParentSupport* service may be too remote to attract an application for an interim RPO or RPO. The

Committee makes this point given the evidence that OCP may partner with “*non government and community based providers to deliver services.*”<sup>148</sup>

### **Part 3, Information Sharing**

3.45 Part 3 of the Bill provides for the sharing of information between 10 defined government agencies. Clause 3(k) then provides a ‘catch all’ provision for any other government agency to be prescribed in regulations, as an information sharing agency. Misusing confidential information attracts a penalty of \$12,000 and imprisonment for one year.<sup>149</sup>

3.46 Currently only DCD has legislative capacity to seek information from the Department of Education and Training (**DET**) or the Department of Housing and Works.<sup>150</sup> However, there is no mechanism to enable the sharing of information between these three agencies.<sup>151</sup> Part 3 expressly addresses that deficiency and adds other agencies. The OCP’s view is that information sharing will assist in the proper planning of responses to family dysfunction. The OCP gave the following example:

*If we are working with parents to get a child back to school, it is obviously important that someone is also working with the child to make sure the child is comfortable at school and that appropriate services are available for the child in the school environment and so forth.*<sup>152</sup>

3.47 ALSWA objected to Part 3 stating that parents will fear information sharing in the context of a court process. In ALSWA’s view, “*parents will not voluntarily seek help from government if it means revealing weaknesses that might result in removal of their children*”.<sup>153</sup>

3.48 The Australian Psychological Society (**APS**) raised concerns about authorised officers requesting access to clinical records maintained by psychologists, counsellors and social workers employed by a government or service agency. The APS said:

<sup>148</sup> Tabled paper from the OCP: *Office of Crime Prevention Response to Questions raised by the Standing Committee on Legislation regarding the Parental Support and Responsibility Bill 2005, June 2006*, 28 June 2006, p2.

<sup>149</sup> The Bill, clause 36.

<sup>150</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p4.

<sup>151</sup> Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p4.

<sup>152</sup> Ms Wendy Attenborough, Principal Policy Officer, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p4.

<sup>153</sup> Submission No 5 from ALSWA, 25 January 2006, p6.

*The Bill is silent on the issue of informed consent by the client which is a crucial component of any clinical relationship. The APS believes that psychologists' reports should not be accessible to other parties without client informed consent except by Court direction and certainly not at the request of a public service designate.*<sup>154</sup>

- 3.49 The Committee acknowledges that psychologists, social workers and counsellors, may be troubled by the necessity to advise their clients of the information sharing requirements in the Bill as this may conflict with their professional or ethical codes of conduct. Under the Bill, these professional groups will be required to exercise judgment as to whether or not they will disclose information. Whether advising clients of the information sharing requirements results in a diminution of effective therapeutic interventions is unknown. However, the Committee notes that the objection of the APS will, in practice, be limited to involuntary clients.
- 3.50 The Committee is of the view that express provisions are needed to implement the *Gordon Inquiry* recommendation that agencies share information. The *Gordon Inquiry* found that a lack of information sharing between agencies, in relation to family violence and child abuse, gave rise to considerable impediments in service delivery.<sup>155</sup> The Committee finds that the *Gordon Inquiry* recommendation for agencies to share information outweighs the argument of the APS.

*Clause 9(5): Issuing Guidelines*

- 3.51 Under clause 9(5), the Committee noted that the CEO of the department administering the legislation must issue 'guidelines' pertaining to the disclosure of information. In clause 9(6) disallowable regulations may include provisions about the receiving and storing of information as well as restricting access to information.
- 3.52 The WA Police Service explained the importance of guidelines and how they will need to reflect the:

*particularly sensitive nature of some of our information or intelligence holdings. We may have information that we are not able to release because it may be necessary to protect particular people by not releasing it.*<sup>156</sup>

- 3.53 The Committee noted that the guidelines will be developed to reflect a realistic balance between disclosure to protect the rights of children on the one hand, and the

<sup>154</sup> Submission No 9 from the APS, 6 February 2006, p5.

<sup>155</sup> Gordon Inquiry, Chapter 20, Findings Recommendations and Responses to the terms of reference, Recommendation 186, p497.

<sup>156</sup> Superintendent Duane Bell, Acting Director, Corporate and Community Development, WA Police Service, *Transcript of Evidence*, 8 March 2006, p2.



children and families' rights to privacy and confidentiality on the other. However, given the seriousness of balancing these considerations as well as noting the severe penalty for misusing information, the Committee considered whether the guidelines should be made subject to the tabling and disallowance provisions of the *Interpretation Act 1984*. Parliamentary scrutiny will provide added protection of these important rights.

- 3.54 OCP argued against the guidelines being made a disallowable instrument. OCP advised that guidelines will provide detail on the operational and administrative aspects of RPOs, RPAs and information sharing.<sup>157</sup> However, they are not given the title "regulations" because they do not determine the rights of individuals or between individuals and are not of a legislative or regulatory nature. OCP stated that the guidelines are administrative in character to be:

*referred to and inform officers' decisions in relation to when and how to disclose information. For example, there may be good reason 'in the best interests of the child' to disclose or not to disclose information.*<sup>158</sup>

- 3.55 The Committee noted the response of the OCP but finds that the seriousness of balancing the considerations referred to at paragraph 3.53 as well as the penalty for misusing information, requires a higher threshold of accountability to the Parliament for the prescription of how such information is to be shared. Making the guidelines subject to the tabling and disallowance provisions of the *Interpretation Act 1984* will ensure that the Parliament scrutinises these sensitive and private disclosure arrangements.<sup>159</sup> Accordingly the Committee makes the recommendation below and the statutory changes required to give effect to this are set out in **Appendix 1**.

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<sup>157</sup> Letter from the OCP dated 7 August 2006, p3.

<sup>158</sup> Ibid, p3.

<sup>159</sup> Unlike, for example, the guidelines in section 80, *Children and Community Services Act 2004* which deal with placement arrangements for children from culturally or linguistically diverse backgrounds.

**Recommendation 2: The Committee recommends that clause 9 of the Parental Support and Responsibility Bill 2005 be amended in the following manner:**

**Clause 9**

**Page 6, after line 26 - To insert -**

“

**(6) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to the guidelines as if the guidelines were regulations.**

”.

**Part 4, clause 10: Responsible Parenting Agreements**

- 3.56 Clause 10 provides for parents and an authorised officer to enter into an RPA. Under clause 10(5), the RPA does not create legally enforceable obligations on either of the parties.
- 3.57 The Committee found broad community support for the concept of RPAs both at the OCP’s Discussion Paper phase and during hearings into the Bill.<sup>160</sup> However, this support was qualified by WACOSS’ reference to the effectiveness of parenting agreements when run on a voluntary basis “*outside a legislative framework.*”<sup>161</sup>
- 3.58 Other stakeholders questioned the fundamental implication underlying RPAs that parental competence is associated with the management of crime control.<sup>162</sup> For example, YACWA believes compulsion does not work and might achieve a counter effect. YACWA said:

*When people are compelled to do things, they dig in their heels because they think it is inappropriate. They will not take the matter seriously or they might not take it on board because they have been told to do it.*<sup>163</sup>

- 3.59 The APS reinforced this when it said RPAs:

<sup>160</sup> For example, during the OCP’s Discussion Paper phase, the Ethnic Communities Council of WA Inc and during the Committee’s inquiry, WACOSS in Submission No 7, 2 February 2006, p2.

<sup>161</sup> Submission No 7 from WACOSS, 2 February 2006, p2.

<sup>162</sup> Submission No 9 from the APS, 6 February 2006, p5.

<sup>163</sup> Ms Karyn Lisignoli, Executive Officer, YACWA, *Transcript of Evidence*, 8 March 2006, p7.

*will not guarantee successful outcomes. On the contrary, agreement to attend counselling to improve parenting skills could simply represent superficial compliance on behalf of parents involved.*<sup>164</sup>

3.60 YACWA said:

*We would rather people were encouraged and supported to do things. If parents are able to access all the resources they need but are still refusing to parent properly, it becomes a matter of care and protection for the child. Consideration must then be given to whether the family environment is the right environment for the child to live in.*<sup>165</sup>

3.61 Children's Court President Denis Reynolds said:

*I think that parenting contracts and consequences for them being breached would be best dealt with by being incorporated within the one piece of legislation namely the Children and Community Services Act 2004. There is already provision in the Children and Community Services Act 2004 in relation to parenting.*<sup>166</sup>

3.62 The APS questioned the quality of interventions offered by authorised officers in government departments which could lead to referrals to existing welfare services for parenting guidance, counselling, support groups, personal development courses or groups. The APS believes a minimum set of qualifications or competencies should apply to authorised officers dealing with families and children in distress as they broker service provision.<sup>167</sup>

3.63 OCP advised that although no formal decision has yet been made about contracting out services, it is anticipated that alternative models of service provision may be required in rural and remote regions. OCP said:

*This may include partnering with non government and community based providers to deliver services. Employees of these partner organisations will require qualifications commensurate with employees of ParentSupport.*<sup>168</sup>

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<sup>164</sup> Submission No 9 from the APS, 6 February 2006, p7.

<sup>165</sup> Ms Karyn Lisignoli, Executive Officer, YACWA, *Transcript of Evidence*, 8 March 2006, p7.

<sup>166</sup> Submission No 4 from Judge Denis Reynolds, President, Children's Court of Western Australia, 27 January 2006, p6.

<sup>167</sup> Submission No 9 from the APS, 6 February 2006, p4.

<sup>168</sup> Tabled paper from the OCP: *Office of Crime Prevention Response to Questions raised by the Standing Committee on Legislation regarding the Parental Support and Responsibility Bill 2005, June 2006, 28 June 2006, p2.*

- 3.64 The Committee noted the qualifications of employees of *ParentSupport* range from Level 7 for a Senior Clinical Adviser to Level 2 positions for Parent Visitors, the latter requiring a Diploma in Child Services Management and extensive experience in child care and provision of parenting advice.
- 3.65 DCS has reservations about how RPAs will work with Aboriginal families. Ms Wendy Murray, Director, Planning Policy and Review, DCS, questioned how RPAs that engage parents to be involved and participate in improving skills and behaviours in relation to rearing children can “*best be constructed and delivered with Aboriginal families and kids and with strong Aboriginal community involvement*”.<sup>169</sup>
- 3.66 The Committee notes that DCS will not be providing parenting services under the Bill but the Court may require certain conditions in an RPO that relate to the service provision responsibilities of DCS, for example, court services and reports on monitoring of community based orders.<sup>170</sup>

*Clause 10(2)(c): avoiding contact with a particular person*

- 3.67 Clause 10(2)(c) of the Bill provides that by agreement, a parent can ensure their child avoids contact with a “*particular*” person or persons in the RPA. These persons are likely to be other offending, anti-social or truanting juveniles exercising peer group influence on a young person. In the case of Aboriginal juveniles, these young people are likely to be those who, according to Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, “*supervise*” and “*keep an eye on the offender*”. This is because Aboriginal “*children will look more to each other for guidance regarding appropriate behaviours as opposed to parents or authority figures*”.<sup>171</sup>
- 3.68 The word “*particular*” in clause 10(2)(c) means “*pertaining to some one person, rather than to others*”<sup>172</sup> and thus, an RPA may contain identifying information about another juvenile (in the case of an Aboriginal juvenile, potentially a number of juveniles). However, that particular person may never know that his or her name is on an RPA. The Committee considers that protecting the identity of minors is an important legal principle, enshrined in existing legislation, for example, section 35(1)

<sup>169</sup> Ms Wendy Murray, Director, Planning Policy and Review, DCS, *Transcript of Evidence*, 8 March 2006, pp1-2.

<sup>170</sup> And also the Department of the Attorney General (formerly the Department of Justice), Tabled Paper from the OCP: *Office of Crime Prevention Response to Questions raised by the Standing Committee on Legislation regarding the Parental Support and Responsibility Bill 2005, June 2006*, 28 June 2006, p3.

<sup>171</sup> Dr Tracy Westerman, Manager, Indigenous Psychological Services, Critique & Comments on the Parent Support Program for the Office of Crime Management (2005), p7.

<sup>172</sup> Macquarie Dictionary, Second Edition, (1991), p1294.

of the *Children's Court of Western Australia Act 1988*.<sup>173</sup> Protecting those minors listed on an RPA is particularly important given the evidence of:

- Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, that “*from the age of 14, as kids get older and leave school and go to work, rates of offending drop off...*”<sup>174</sup>, and
- DCS that “*Eighty percent of young people who are caught and come before the teams do not reoffend; it is just a part of normative adolescent development.*”<sup>175</sup>

3.69 The Committee has concerns with how clause 36 of the Bill will keep confidential, the identity of a ‘particular’ person named in an RPA under clause 10(2)(c). Clause 36 states that a person engaging in the performance of functions must not directly or indirectly record, disclose or make use of confidential information obtained in the course of duty. The Committee notes that clause 36 appears to be a clause of general application and lacks specificity.

3.70 The Committee observed a Government proposed amendment to the Bill on Supplementary Notice Paper No 41, Issue No 3 in the name of the Parliamentary Secretary to the Minister for Community Development dated 16 October 2006. That amendment proposes to insert new clauses 37(1)(a) and (b) into the Bill to protect the identity of both the parent and child named on an RPA. The Government proposes that publication of the names of the parent and child be restricted, unless in accordance with a written authorisation. Additionally, a ‘particular’ person named in an RPA under clause 10(2)(c) will have their identity expressly restricted from publication and disclosure under a proposed new clause 37(1)(e) which requires parents “*to ensure ... the child avoids contacting*” a person named in an RPA.

3.71 The Committee finds the Government’s proposed new clause 37(1)(e) which is reproduced and underlined below improves the Bill.

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<sup>173</sup> It states: “*...a person shall not publish or cause to be published in any newspaper or other publication or broadcast or cause to be broadcast by radio or television a report of any proceedings in the Court, or in any other court on appeal from the Court, containing any particulars or other matter likely to lead to the identification of a child who is concerned in those proceedings — (a) as a person against whom the proceedings are taken; (b) as a person in respect of whom the proceedings are taken; (c) as a witness; or (d) as a person against or in respect of whom an offence has or is alleged to have been committed.*”

<sup>174</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p2.

<sup>175</sup> Ms Robyn Wells, Director, Community Justice Services, DCS, *Transcript of Evidence*, 8 March 2006, p11.

<p><b>37.</b></p>	<p><b>Restriction on publication of certain information or material</b></p> <p>(1) A person must not, except in accordance with a written authorisation given under this section, publish information or material that identifies, or is likely to lead to the identification of, another person (the “<b>identified person</b>”) as —</p> <p style="padding-left: 20px;">(a) a person who is or was a parent who entered into a responsible parenting agreement;</p> <p style="padding-left: 20px;">(b) a person who is or was a child in respect of whom a responsible parenting agreement was entered into;</p> <p style="padding-left: 20px;">(c) a person who is or was a parent to whom a responsible parenting order is or was directed or in respect of whom an application for such an order has been made;</p> <p style="padding-left: 20px;">(d) a person who is or was a child in respect of whom a responsible parenting order was made or an application for such an order has been made; or</p> <p style="padding-left: 20px;"><u>(e) a person who the parent of a child is to ensure, or take all reasonable steps to ensure, the child avoids contacting, under a responsible parenting agreement, interim responsible parenting order or responsible parenting order.</u></p> <p style="padding-left: 40px;">Penalty: \$12 000 and imprisonment for one year.</p> <p>(2) If the identified person is under 18 years of age, written authorisation for the publication of information or material to which subsection (1) applies may be given by the CEO.</p> <p>(3) If the identified person has reached 18 years of age, written authorisation for the publication of information or material to which subsection (1) applies may be given —</p> <p style="padding-left: 20px;">(a) by the identified person; or</p> <p style="padding-left: 20px;">(b) if the identified person is dead or cannot be found after reasonable inquiries, by the CEO.</p> <p>(4) Subsection (1) does not apply to information or material contained in a report of proceedings to which section 35(1) of the Children’s Court of Western Australia Act 1988 applies.</p> <p>(5) In this section —</p> <p style="padding-left: 20px;">“<b>CEO</b>” means the CEO who applied for the responsible parenting order;</p> <p style="padding-left: 20px;">“<b>publish</b>” means to bring to the notice of the public or a section of the public by means of newspaper, television, radio, the internet or any other form of communication.</p>
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**Part 4, clause 11: No liability for failing to comply with responsible parenting agreements**

3.72 Under clause 11 no action lies in tort against the State, a Minister, a government agency or an official for any failure to comply with an RPA. Parents have no legal recourse against a government agency that agrees to provide parenting guidance, counselling, support groups, personal development courses/groups which are ineffective at changing the child’s behaviour. The Committee noted that no such

protection is afforded to ‘service agencies’ providing counselling or courses to parents under RPAs.

### **Part 5: Responsible parenting orders**

- 3.73 A majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs) have recommended at page 64 of this Report to oppose the whole of Part 5 of the Bill. In the event the majority of the Committee’s recommendation is not agreed to, the following paragraphs on various clauses in Part 5 will assist debate in the House.
- 3.74 A minority of the Committee (Hons Graham Giffard and Sally Talbot MLCs) recommend that Part 5 of the Bill be passed.

### **Part 5, clauses 12 and 13: Responsible parenting orders**

- 3.75 Clause 12 provides for either of three CEOs to make an application for an RPO and that the relevant CEO must give a copy of that application to the parent. Clause 12(4) provides for the application to include notice of the listing date in Court. Clause 13 requires the parent to perform one or more various support/counselling activities (including residential counselling) and proactively ensure their child attends school, avoids contact with named persons and avoids specified locations.
- 3.76 The Committee found little support for the concept of RPOs during hearings and from submissions. The Committee noted the following comments in relation to RPOs.

#### *(1) Punishment*

- 3.77 The Committee heard evidence that children will be punished if their parents are subjected to court processes as a result of their behaviour.<sup>176</sup> Judge Hal Jackson, Chairman, Ministerial Advisory Council on Child Protection, referred to how punishment “*would be wreaked on the children for a fine imposed on the parent.*”<sup>177</sup>
- 3.78 The NSW Attorney General’s Department reviewed the *Children (Protection and Parental Responsibility) Act 1997* (NSW) and noted that incompetent parents judged neglectful when their children offend, “*will hardly be better disposed towards their children as a result. Instead of making parents responsible, punishment is likely to make them vengeful.*”<sup>178</sup>

<sup>176</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p6.

<sup>177</sup> Judge Hal Jackson, Chairman, Ministerial Advisory Council on Child Protection, *Transcript of Evidence*, 8 March 2006, p5.

<sup>178</sup> Legislation & Policy, Attorney General’s Department, 2001, Review of the *Children (Protection and Parental Responsibility) Act 1997*, Part 2: Parental Responsibility, p14.

3.79 DCS said that although it had not specifically sought the views of young people on the parenting agreement/order concept, there may be “*many occasions [when] there would be a risk posed to the children, particularly those who come from violent families and who are not doing what is required of them.*”<sup>179</sup> However, Ms Wendy Murray, Director, Planning Policy and Review, DCS, provided an alternative perspective. Ms Murray said:

*other kids would be happy if their parents were getting support. In previous occupations, I dealt with kids whose parents were mentally ill. In many cases kids are thrilled if there is some kind of formal support process for their parents. Quite often kids are acting as brokers for their parents’ illnesses.*<sup>180</sup>

3.80 The Committee requested YACWA seek the direct views of young people on the Bill rather than views of its youth workers. Subsequently, YACWA interviewed 23 young people aged from 15 to 23 years, two of whom were Aboriginal, about the Bill to determine if young people themselves are concerned at incurring additional punishment from their parents in the event their parents have to appear in court or are fined.<sup>181</sup>

3.81 According to YACWA, those interviewed believed the legislation had the potential to worsen family relationships, that parents would feel angry and resentful about being blamed for the child’s behaviour and this would create tension in the home. Young people said that the more a parent tries to control their child, the more likely the child is to rebel against the parents. Some of the young people felt their parents would use the legislation against them, by placing additional constraints on them, punishing them and generally making their lives more difficult. YACWA reported that:

*a couple of young people said that because of the way their parents treated them, they would use the legislation against their parents, and would be happy to see them fined.*<sup>182</sup>

## (2) *Compromise of the therapeutic relationship*

3.82 The APS believes RPOs compromise the integrity of the professional, counselling relationship which relies upon the development of trust and respect to facilitate honest and straightforward disclosure, self-analysis and constructive change. Individuals engaged in a counselling relationship require the freedom of choice, a genuine

<sup>179</sup> Ms Robyn Wells, Director, Community Justice Services, DCS, *Transcript of Evidence*, 8 March 2006, p12.

<sup>180</sup> Ms Wendy Murray, Director, Planning Policy and Review, DCS, *Transcript of Evidence*, 8 March 2006, p12.

<sup>181</sup> Letter from YACWA, received 18 April 2006, p2.

<sup>182</sup> *Ibid*, pp3-4.



commitment to the process and a sense of personal security to enable them to properly benefit from the therapeutic intervention. A counselling relationship forged by duress, even if implicit, will be undermined as a consequence.<sup>183</sup>

- 3.83 Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, has the contrary view that disclosure is not necessarily fatal to the therapeutic relationship. Professor Silburn said:

*What currently happens in situations of urgency when there are child abuse concerns, is that it is a question of weighing up whether the level of risk involved constitutes sufficient reason for this information to be made available to other parties.*

*Agencies involved in securing compliance will raise new problems for organisations which must now deal with involuntary clients. Psychologists do deal with involuntary clients in the mental health system. ... it is simply a matter of being very clear about what the parameters of the relationship are, and making sure that people are apprised of what the situation is. However, I do not believe that is an insurmountable problem.*<sup>184</sup>

- 3.84 The Committee was disappointed that two invitations to the APS to appear as a witness in the inquiry did not result in attendance. Thus, the Committee was unable to explore the objections of the APS any further.

- 3.85 The Committee noted the concern Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, has with the threshold issue of informed consent. Dr Westerman said:

*My struggle is always about the issue of informed consent for people for whom basic levels of literacy and understanding of contracts and agreements are always going to be questionable.*<sup>185</sup>

### *(3) Applicability of RPOs on Aboriginal parents*

- 3.86 In 2004, DCS wrote in its submission to the OCP's Discussion Paper phase:

*experience from the Juvenile Justice Team indicates that a number of cultural barriers exist in regards to engaging Aboriginal families in*

<sup>183</sup> Submission No 9 from the APS, 6 February 2006, p9.

<sup>184</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p4.

<sup>185</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p6.

*justice processes. The concept of parenting and the broader shared obligations for protecting & caring for young people are different for Aboriginal people and the Department has not been able to resolve fully, the application of parenting orders in this cultural context.*

- 3.87 During the Committee's inquiry process, DCS disclosed that it has still not been able to resolve the parenting order concept within an Aboriginal cultural context. Ms Wendy Murray, Director, Planning Policy and Review, DCS, explained that DCS was supportive of an increasing focus on parental involvement and parental responsibility, but:

*the proposals coming forward [in 2004] were even less likely to be effective for Aboriginal kids than our current practices. While we endorse the principle of parental involvement, responsibility and all of those matters, we were not persuaded in any way that ending up with orders that could result in some kind of criminal sanction being applied to parents is going to help. At the extreme end, we opposed part of the concept while at the same time supporting many of the principles that underpin the generation of the concept.*<sup>186</sup>

- 3.88 Ms Murray stated that RPOs are a useful means to drive service provision as occurred in the United Kingdom but RPOs are a different creature to RPAs "because that is where you head into the process of taking things to court and creating some kind of criminal disposition."<sup>187</sup> Mr Michael Thorn, Director, OCP, explained, "it is the people who resist parenting supports services who are the target of the Bill, not those who volunteer for parenting services."<sup>188</sup> Further, the OCP predicts the number of RPOs will be minimal because:

*the Bill is about situations whereby deficiencies in parenting are identified and it is considered that those deficiencies can be rectified. An order is likely to be sought only in a minority of cases.*<sup>189</sup>

*(4) RPOs and links to parenting services.*

- 3.89 Most statutes, if their general words were taken literally in their widest sense, would apply to the whole world, but they are always read as being restricted in their operation within territorial limits.<sup>190</sup> If the Bill is passed, RPAs and RPOs will apply

<sup>186</sup> Ms Wendy Murray, Director, Planning Policy and Review, DCS, *Transcript of Evidence*, 8 March 2006, pp1-2.

<sup>187</sup> *Ibid*, p2.

<sup>188</sup> Mr Michael Thorn, Director, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 14 December 2005, p14.

<sup>189</sup> *Ibid*, p6.

<sup>190</sup> *Jumbanna Coal Mine NL v Victorian Coal Miners' Association* (1908) 6 CLR 309 at 363.

to the whole of Western Australia. However, clause 18(2)(h) ensures that an RPO can only be made if the necessary facilities, counselling, groups or courses will be available for the parent to engage and comply. This may be problematic in remote /regional areas where government and non government services are scarce or non existent.<sup>191</sup> This means the Bill, although applying to the whole of the State, will progressively apply in those police districts where *ParentSupport* is implemented.

*Clause 13(2)(c): avoiding contact with a specified person*

3.90 This clause contains a similar concern to that noted by the Committee at paragraphs 3.67 to 3.69. Clause 13(2)(c) of the Bill requires a parent to ensure their child avoids contact with a “*specified*” person or persons named on an RPO.

3.91 The word “*specified*” in clause 13(2)(c) means ‘to state in detail’<sup>192</sup> and as such the RPO will contain identifying information about another juvenile. However, the specified person may never know that his or her name is on a court document.

3.92 The Committee noted a Government proposed amendment to the Bill on Supplementary Notice Paper No 41, Issue No 3 in the name of the Parliamentary Secretary to the Minister for Community Development dated 16 October 2006. That amendment proposes to insert new clauses 37(1)(c) and (d) into the Bill to protect the identity of both the parent and child named on an RPO. The Government proposes that publication of the names of the parent and child be restricted, unless in accordance with a written authorisation. Additionally, a ‘specified’ person named in an RPO under clause 13(2)(c) will have their identity expressly restricted from publication and disclosure under a proposed new clause 37(1)(e) which requires parents “*to ensure ... the child avoids contacting*” a person in an RPO.

3.93 The Committee finds the Government’s proposed new clause 37(1)(e) which is reproduced and underlined at page 48 of this Report, improves the Bill.

*Clause 14: Interim RPOs*

3.94 Clause 14 provides for interim RPOs while clause 14(4)(b) allows the court (by leave) to make an interim RPO in the absence of a parent or without hearing the parent at all. The YLS pointed out that clause 14(4)(b) contradicts the fundamental principle that an

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<sup>191</sup> For example, *Question without Notice* from Hon Giz Watson MLC to Hon Kate Doust MLC, Parliamentary Secretary to the Minister for Community Development, 25 May 2006, revealed that of seven regions constituting country Western Australia, only the Goldfields, the Great Southern and Murchison have four non-government parenting services between them. Of government provided parenting services, the Goldfields has five, the Great Southern four, South West one, Murchison six, Peel four, Pilbara six and Kimberley three.

<sup>192</sup> Macquarie Dictionary, Second Edition, (1991), p1680.

accused person has the right to confront his/her accusers.<sup>193</sup> *Commissioner of Police v. Tanos*<sup>194</sup> explains this legal principle:

*For it is a deep-rooted principle of the law that before any one can be punished or prejudiced in his person or property by any judicial or quasi-judicial proceeding he must be afforded an adequate opportunity of being heard. In Cooper v. Wandsworth Board of Works,<sup>195</sup> Byles J. said that a long course of authority established that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature.<sup>196</sup>*

3.95 The courts have historically guarded and preserved the common law principles they developed and in construing legislation, begin with the presumption that the legislature does not interfere with fundamental rights, freedoms, principles and immunities unless it makes its intention to do so unmistakably clear.<sup>197</sup> In *Coco v R* the High Court said:

*an abrogation or curtailment of a fundamental right, freedom or immunity ... must be clearly manifested by unmistakable and unambiguous language. [and that a very stringent test would] ... enhance the parliamentary process by securing a greater measure of attention to the impact of legislative proposals on fundamental rights.<sup>198</sup>*

3.96 The Committee notes that clause 14(4)(b) is mitigated by clause 14(3) which provides that the Court is prohibited from making an interim order unless satisfied that the parent has received notice of the application.

3.97 The WA Police Service questioned the need for an interim order to be heard in the absence of the parent or without hearing the parent, given that clause 14(4)(b) can be equated to the notice provisions for interim violence restraining orders or misconduct orders. In those cases, interim orders are made without the typical opportunity for the respondent to prepare a defence because the seriousness of the case warrants early intervention. Superintendent Duane Bell, Acting Director, Corporate and Community Development, WA Police Service said:

<sup>193</sup> Submission No 2 from the YLS, 23 December 2005, p3.

<sup>194</sup> (1958) 98 CLR 383, at pp 395-396.

<sup>195</sup> (1863) 14 CB (NS) 180 (143 ER 414).

<sup>196</sup> (1863) 14 CB (NS) at p420.

<sup>197</sup> *Daniels Corporation International Pty Ltd and another v Australian Competition and Consumer Commission* [2002] HCA 49; (2002) 77 ALJR 40 at 43 per Gleeson CJ, Gaudron, Gummow and Hayne JJ, at 49 per McHugh J, and at 65-66 per Callinan J.

*Consideration must be given to whether the behaviour of a child had reached the stage at which immediate intervention by a court was required. Given the threshold of behaviour, it seems to be a systematic course of conduct. I am not convinced that we would need to take urgent action that would prevent a parent from receiving notification and from being prepared to present his or her case to a court. That is a long way of saying that the provisions of this bill should be weighed against similar provisions. I do not necessarily consider them to be equal. In this case it is in the child's best interests and it is beneficial for a court to have more information.*<sup>199</sup>

- 3.98 In contrast to this view, OCP argued that there may in fact be a level of urgency for an interim RPO “*commensurate to a restraining order*”.<sup>200</sup> For example, where the child is at risk of escalation of problematic behaviour and may become subject to a criminal proceeding.

#### *Understanding the Notice*

- 3.99 The YLS referred to the Court’s presumption that “*the parties in receipt of any correspondence have the necessary skills to understand the [RPO], whether an interim order or final order, thus completely ignoring the needs of parents with literacy issues or those from non English speaking backgrounds.*”<sup>201</sup> ALSWA said:

*It is all very well to find out about it and turn up, but if you do not have time to respond and defend or oppose the application successfully or deal with it, essentially it is an ex parte hearing; you may as well not be there for all that you can do about it. So what we are saying - ... is that this is more along the lines of people needing not only notice but also time to participate in the proceedings appropriately so that justice occurs, rather than essentially one side being heard and the court going only on that.*<sup>202</sup>

- 3.100 The Committee noted a Government proposed amendment to the Bill on Supplementary Notice Paper No 41, Issue No 3 in the name of the Parliamentary Secretary to the Minister for Community Development dated 16 October 2006. This

<sup>198</sup> *Coco v R* (1994) 179 CLR 427 at 437–438.

<sup>199</sup> Superintendent Duane Bell, Acting Director, Corporate and Community Development, WA Police Service, *Transcript of Evidence*, 8 March 2006, p3.

<sup>200</sup> Tabled paper from the OCP: *Office of Crime Prevention Response to Questions raised by the Standing Committee on Legislation regarding the Parental Support and Responsibility Bill 2005, June 2006*, 28 June 2006, p5.

<sup>201</sup> Submission No 2 from the YLS, 23 December 2005, p3.

<sup>202</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p6.

amendment proposes that the Children’s Court must take reasonable steps to facilitate the participation in proceedings of those who have difficulty communicating or understanding English or have a disability. The proposed new clause, which the Committee finds improves the Bill, is reproduced below.

33. *Court to facilitate participation in proceedings*

(1) *In proceedings for or in respect of an order the Court must, as far as is practicable, ensure that each person participating in the proceedings understands the nature, purpose and legal implications of the proceedings and of any order or decision of the Court.*

(2) *If the Court is satisfied that a person participating in the proceedings has any —*

(a) *difficulty understanding or communicating in English; or*

(b) *disability,*

*that prevents or restricts the person’s understanding of, or participation in, the proceedings, the Court must take reasonable steps to ensure that the services of an interpreter or other appropriate person are made available to the person during the proceedings so as to facilitate the person’s understanding of, or participation in, the proceedings.*

(3) *Nothing in this section is to be taken to affect the operation of section 34(1) of the Children’s Court of Western Australia Act 1988.*

*Clause 14(2)(b): Interim responsible parenting order and avoiding contact with a specified person*

3.101 This clause raises the same issue noted at paragraphs 3.67 to 3.69 and 3.90 to 3.93. Clause 14(2)(b) of the Bill requires a parent to ensure their child avoids contact with a “*specified*” person or persons on an interim RPO but the specified person may never know that his or her name is on a court document.

3.102 The Committee noted a Government proposed amendment to the Bill on Supplementary Notice Paper No 41, Issue No 3 in the name of the Parliamentary Secretary to the Minister for Community Development dated 16 October 2006. That amendment proposes to insert new clauses 37(1)(c) and (d) into the Bill to protect the identity of both the parent and child named on an RPO. The Government proposes

that publication of the names of the parent and child be restricted, unless in accordance with a written authorisation. Additionally, a ‘specified’ person named in an RPO under clause 14(2)(b) will have their identity expressly restricted from publication and disclosure under a proposed new clause 37(1)(e) which requires parents “to ensure ... the child avoids contacting” a person named in an “interim” RPO.

3.103 The Committee finds the Government’s proposed new clause 37(1)(e) which is reproduced and underlined at page 48 of this Report, improves the Bill.

### Clause 18

3.104 Clause 18 states that the Court must not make an RPO unless it is satisfied as to a number of matters in subclauses (1)(a) to (f) and has taken those matters into account.

#### *Clause 18(1)(e)*

3.105 Clause 18(1)(e) directs a Court to be satisfied that a parent “understands” the effect of the proposed order and its consequences. This clause is relevant to culturally and linguistically diverse parents; and particularly Aboriginal parents in remote/regional areas where according to ALSWA an Aboriginal parent may:

- be unable to speak or read Standard Australian English;
- exhibit different cultural communication conventions such as silence or agreeing with whatever an authority figure states;
- have damaged hearing; and
- not necessarily volunteer that they cannot understand very well.<sup>203</sup>

3.106 Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, told the Committee that:

*Aboriginal people have a tendency to respond to negatively worded questions. That tendency means it is a cultural difference. People can respond to a negatively worded item by agreeing with it and have an elevation on that score. However, that would be a result of that tendency to relate to negatively worded items as opposed to being a deficit in functioning. There is a litany of examples like that throughout the literature.*<sup>204</sup>

<sup>203</sup> Submission No 5 from ALSWA, 25 January 2006, p10.

<sup>204</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p11.

- 3.107 ALSWA stated that the Commonwealth's Translating and Interpreting Services does not provide interpreters for Aboriginal or TSI languages. The Committee confirmed that whilst this is correct, the Kimberley Interpreting Service established in 2000 in Broome has 80 interpreters providing translating services in over a dozen languages for the health and justice sectors.<sup>205</sup>
- 3.108 The Committee noted the following answer to a *Question on Notice* from Hon Giz Watson MLC to Hon Sue Ellery MLC, Parliamentary Secretary representing the Attorney General, regarding the use of interpreters in courts:

*When interpreters are required, the courts engage independent and, where possible, accredited interpreters. There are also informal interpreter services operating in regional and remote communities. The four agencies used by the courts are:*

- 1. Aboriginal Interpreting Service (Northern Territory);*
- 2. Wangkanyi Ngurra Tjurta Aboriginal Corporation Language and Culture; Centre- Aboriginal Interpreting service, Kalgoorlie;*
- 3. Wangka Maya, Pilbara Aboriginal Language Centre; and*
- 4. Kimberley Interpreting Service.*<sup>206</sup>

#### *Understanding an RPO and legal representation*

- 3.109 Clause 18(1)(e) states that the Court must not make an RPO unless it is satisfied that the parent "*understands (amongst other things) the effect of the proposed order and the requirements under it*". The YLS said:

*The provision of legal representation is vitally important to enable a parent to understand the significance of the proceedings, and the importance of his or her obligations and responsibilities, yet, there appears to be no provision for parties to be provided with access to legal representation.*<sup>207</sup>

- 3.110 The Committee noted that the Bill does not provide access to legal representation. The OCP confirmed that proceedings in the Children's Court can occur without the

<sup>205</sup> The Mirima Dawang Woerlab-gerring Language and Culture Centre and Kimberley Language Resource Centre launched the Kimberley Interpreting Service. See: <http://kimberleyinterpreting.org.au/whoneedus.htm>. Also e-mail to the Committee from Dr Knut J Olawsky, Senior Linguist/Coordinator, Mirima Dawang Woerlab-gerring, Language and Culture Centre, Kununurra, 29 March 2006.

<sup>206</sup> Answer to *Question on Notice* 3417 asked in the Legislative Council by Hon Giz Watson MLC and answered by Hon Sue Ellery MLC, Parliamentary Secretary representing the Attorney General, *Parliamentary Debates (Hansard)*, 30 May 2006, p3141.

<sup>207</sup> Submission No 2 from the YLS, 23 December 2005, p5.



parent having representation and that although not an ideal situation, this would not be unusual. For example, proceedings for child protection orders can continue without the parents necessarily being represented.<sup>208</sup> The OCP stated that a parent could seek legal aid.

### *Legal Aid funding*

3.111 ALSWA explained that legal aid is the main source of legal help for Aboriginal and TSI people but to ALSWA's knowledge, no proposal has been made to give legal aid services more money. In the case of ALSWA, it is funded by the Commonwealth government until June 2008 with the quantum based on the type of work currently undertaken. There is no additional funding for representing Aboriginal persons facing RPO proceedings, whereas:

*the applicant will generally - certainly in the case of DCD - have the benefit of in-house lawyers. The applicant is fairly high up enough in DCD to say, 'I require your services, lawyer, to assist in this application', whereas the respondent is not in the same position.*<sup>209</sup>

3.112 The Committee has reservations about the availability of legal aid money for representation in the Children's Court for an interim or RPO proceeding, despite the OCP's general information that:

*not-for-profit bodies ... offer legal services, such as the Aboriginal Legal Service and Legal Aid Commission, the legal profession itself operates an extensive pro bono scheme that is promoted through the Law Society. There are means for people without means to obtain legal services and, in particular where the circumstances impact on people and their children's lives, there are services that can be got through those voluntary systems and through not-for-profit community groups.*<sup>210</sup>

3.113 The Committee is of the view that the question of additional funding is a subject matter for the responsible Minister during debate on the Bill.

### *Clause 18(2)*

3.114 Clause 18(2) states that when the Court decides to make an RPO and determine the content, it must take into account nine matters, including whether a relevant

<sup>208</sup> Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, Department of the Premier and Cabinet, *Transcript of Evidence*, 8 February 2006, p11.

<sup>209</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006 pp6-7.

<sup>210</sup> Mr John Lightowlers, Solicitor, Department of the Premier and Cabinet, Public Sector Management Division, *Transcript of Evidence*, 8 February 2006, pp15-16.

government agency has made reasonable efforts to assist and encourage the parents to manage the child's behaviour.<sup>211</sup> Further, the Court must take into account the extent to which that agency has given the assistance in any relevant RPA.<sup>212</sup>

3.115 Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, is of the view that parenting orders produce a requirement of accountability of services to meet the needs of these children. Professor Silburn said:

*It has been too easy for services to get off the hook with this and to neglect their responsibilities. There may need to be some sort of assurance that if people are compelled to attend one of these groups, the legislation greatly strengthens the likelihood that services would meet their side of the social contract.*<sup>213</sup>

3.116 The Committee noted that an RPO can only be effected in a district where *ParentSupport* has been implemented. This is because of the interplay between the definition of "government agency" in clause 3 and clause 18(2). The fact that there may be other State or Commonwealth government or non-government parenting services available within a district is not relevant. For an RPO application to proceed, there must be a nexus with a *ParentSupport* provided service through either:<sup>214</sup>

- a department;
- a State agency or instrumentality; or
- a body or the holder of an office, post or position, established or continued by or under a written law for a public purpose.

3.117 The Committee further noted that nothing in clause 18(2) of the Bill (or elsewhere) expressly requires the Government to provide parenting services. The OCP, in acknowledging this omission argued that this is necessarily implied from the fact that *ParentSupport* exists, is funded and operates.<sup>215</sup>

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<sup>211</sup> The Bill, clause 18(2)(f).

<sup>212</sup> The Bill, clause 18(2)(g).

<sup>213</sup> Professor Sven Silburn, Director, Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research, *Transcript of Evidence*, 22 March 2006, p4.

<sup>214</sup> As per the definition of "government agency" in clause 3.

<sup>215</sup> Mr Michael Thorn, Adviser, Crime and Justice, Department of the Premier and Cabinet, *Transcript of Evidence*, 28 June 2006, p6.

*Clause 20: Complying with an RPO*

3.118 Whether an interim RPO or RPO, if a parent fails to make “reasonable” efforts to comply with the terms in the order, the parent commits an offence and is liable to a penalty of \$2,000. The amount of the penalty produced the following comment from stakeholders:

- The Salvation Army: “*a fiscal penalty compounds family problems.*”<sup>216</sup>
- Judge Denis Reynolds, President, Children’s Court of Western Australia: “*most of the parents likely to be the subject of orders would not have the financial capacity to pay fines.*”<sup>217</sup>
- ALSWA: “*Aboriginal families are poor, thus it is a major stress to have a fine of this size imposed on them.*”<sup>218</sup> *As an enormous sum, the effect of fining these families is disproportionately harsh compared with other families*”;<sup>219</sup>
- The APS: “*families are already struggling to cope, particularly those dependent on pensions and benefits who may be burdened with credit repayments or gambling debts.*”<sup>220</sup>
- Judge Hal Jackson, Chairman, Ministerial Advisory Council on Child Protection: “*in many of these families, you are really not fining the parent at all. If it is a father who is drinking his income at the pub, he will probably pay the fine by reducing the housekeeping.*”<sup>221</sup>
- YACWA: “*a \$2,000 fine [is] inappropriate and many [of the 23 young people interviewed by YACWA on the amount] believed that this was likely to exacerbate problems faced by struggling families.*”<sup>222</sup>

3.119 The Committee acknowledged these comments but noted that clause 20(1) of the Bill, when read with section 9 of the *Sentencing Act 1995* imposes a maximum fine of \$2,000. That is, when sentencing a person who has been convicted of the offence of

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<sup>216</sup> Submission No 8 from the Salvation Army, p5.

<sup>217</sup> Submission No 4 from Judge Denis Reynolds, President, Children’s Court of Western Australia, 27 January 2006, p3.

<sup>218</sup> Ms Tonia Brajcich, Manager, Law and Advocacy Unit, ALSWA, *Transcript of Evidence*, 8 March 2006, p6.

<sup>219</sup> Submission No 5 from ALSWA, p9.

<sup>220</sup> Submission No 9 from the APS, 6 February 2006, p5.

<sup>221</sup> Judge Hal Jackson, Chairman, Ministerial Advisory Council on Child Protection, *Transcript of Evidence*, 8 March 2006, p5.

<sup>222</sup> Letter from YACWA received 18 April 2006, p3.

failing to make reasonable efforts to comply with either an interim RPO or RPO, the Court can impose a fine of \$2,000 or less.

3.120 The Committee also noted that section 53(1) of the *Sentencing Act 1995* requires the Court, when deciding the amount of the fine, to take into account, as far as is practicable:

- the means of the person to be fined; and
- the extent to which payment of the fine will burden the person.

#### *Fine default*

3.121 Assuming a fine is imposed and a parent then defaulted, clause 35 of the Bill modifies the operation of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* so that neither imprisonment nor suspension of a driver's licence can occur. Further relief for families was provided on 1 May 2005, when the *Civil Judgments Enforcement Regulations 2005* were amended to prescribe educational items, including home computers used by children for educational purposes, as protected from seizure and sale.<sup>223</sup>

#### *Why is a penalty necessary?*

3.122 The Committee noted the vexed question, amongst stakeholders, of introducing a financial penalty in the Bill for non compliance with an RPO. In 1998, a similar issue arose in relation to the School Education Bill 1997 when the former Standing Committee on Public Administration considered the question of financial penalties on students and families for absenteeism. That committee referred to "*considerable debate about the level of penalties and was satisfied that the relevant provisions were necessary to establish an offence.*"<sup>224</sup>

3.123 A majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs), repeats its view at paragraph 3.34 that although legislation has a role in dealing with truanting, anti-social behaviour and juvenile offending, a legislative response with punitive sanctions in respect of parenting and parental responsibility is neither a suitable nor appropriate response. The majority of the Committee is opposed to the whole of Part 5.

<sup>223</sup> Regulation 35, *Civil Judgments Enforcement Regulations 2005*, made under the *Civil Judgments Enforcement Act 2004*, was amended on 1 May 2005. If the fine remains unpaid, the Registrar can apply to Court for a 'work and development order'. The person has to report to a community corrections centre and be assessed for suitability for work. This is a mental and physical assessment and also assesses whether the person poses a risk to the community or an individual.

<sup>224</sup> Western Australia, Legislative Council, Standing Committee on Public Administration (1996-2001), Report 9, *School Education Bill 1997*, 17 September 1998, p11.

- 3.124 A minority of the Committee (Hons Graham Giffard and Sally Talbot MLCs), noted that the objective of the Bill is to instil and promote responsible parenting but in order to reinforce the responsible nature of parenting, it is necessary to have compulsion at law by creating an offence. If no offence is created and only administrative mechanisms are provided for and implemented to promote responsible parenting, then there would be no legal means to either enforce compliance with the Bill's requirements or meet the objectives of the Bill.
- 3.125 The minority of the Committee (Hons Graham Giffard and Sally Talbot MLCs), finds that penalty provisions enable and prescribe powers of a court to impose punishment for an offence. Without a penalty provision, there would be no compulsion at law on parents to comply, for example, with an order to participate in an intervention strategy. Arguably, strategies can only work if there is appropriate judicial force to support them but the minority of the Committee acknowledges the alternative argument of focussing on positive approaches to dealing with non compliance issues.<sup>225</sup>

#### *Sentencing Alternatives*

- 3.126 The OCP advised that section 44 of the *Sentencing Act 1995* provides the Court with considerable discretion in sentencing when the penalty is merely a fine such as in clause 20(1). In this case, the Court can use any one of the following sentencing options in sections 44(2)(a), (2)(b) and (2)(c):
- Section 44(2)(a) allows the court to impose no sentence at all and if this occurs, then under section 44(5), the Court is nevertheless taken to have sentenced the offender.
  - Section 44(2)(b) allows the Court to impose a Conditional Release Order<sup>226</sup> (CRO). This would only be applied if the Court considers that there are reasonable grounds for expecting that the parent will not re-offend during the term of the CRO and that the parent does not need supervising by a community corrections officer during the term of the CRO.<sup>227</sup>

<sup>225</sup> For example, Mr John Hesketh, Area Manager, Student Services, DET, described how DET sends social workers into the home when a child is absent from school and that "*in order to gain entry we have to say that we are working on the child's behalf and not the parents' behalf. We try to work out contracts with the parent to get the child back into school.*" *Transcript of Evidence*, 5 April 2006, p3. Also Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, referred to programs focusing primarily on developing capacity and building on the strengths in communities. Dr Westerman said "*That means the programs do not come across as being paternalistic, because the communities themselves drive the programs and have the prime responsibility for how they should look.*" See *Transcript of Evidence*, 3 May 2006, p11.

<sup>226</sup> A CRO is a detention order set aside. It refers to the person being 'released' from the jurisdiction of the Court. According to DCS, it is the former 'good behaviour bond'.

<sup>227</sup> However, if while the CRO is in force the parent commits another offence (in Western Australia or elsewhere) the parent may be sentenced again for the offence to which the CRO relates.

- Section 44(2)(c) allows the Court to impose a fine.
- 3.127 Judge Denis Reynolds, President of the Children’s Court, voiced his concern about the imposition of fines as most of the parents likely to be the subject of orders would not have the financial capacity to pay fines. Judge Reynolds said:

*Section 20 causes me concern because nowhere does it provide that the court has power to enforce its own orders on its own initiative.*<sup>228</sup>

- 3.128 The Committee noted, with interest, the sentencing alternatives available to the Court under the *Sentencing Act 1995* when a penalty is a fine.

#### *Committee Findings*

- 3.129 A majority of the Committee (Hons Giz Watson, Peter Collier and Ken Baston MLCs), do not support the imposition of a punitive system of parenting orders or a maximum \$2,000 fine. The majority of the Committee recommends that the whole of Part 5 be deleted from the Bill. The statutory changes required to give effect to this recommendation are set out in **Appendix 1**.

**Recommendation 3: The Committee recommends that Part 5 of the Parental Support and Responsibility Bill 2005 be opposed in the following manner:**

**Clause 3**

**Page 3, lines 26 and 27 - To delete the lines.**

**Page 4, lines 11 and 12 - To delete the lines.**

**Clause 4**

**Page 4, line 18 - To delete “, government agency or court” and insert instead -**

**“or government agency”.**

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<sup>228</sup> Submission No 4 from Judge Denis Reynolds, President, Children’s Court of Western Australia, 27 January 2006, p3.

**Clause 6**

**Page 5, line 12 - To delete “or a court”.**

**Clause 7**

**Page 5, lines 24 and 25 - To delete “or any responsible parenting order directed towards them”.**

**Clause 8**

**Page 5, line 28 - To delete “or a court”.**

**Clause 9**

**Page 7, line 5 - To delete “or responsible parenting order”.**

**Clause 12**

**Page 10, lines 3 to 16 - To oppose the clause.**

**Clause 13**

**Page 10, line 17 to page 11, line 12 - To oppose the clause.**

**Clause 14**

**Page 11, line 13 to page 12, line 13 - To oppose the clause.**

**Clause 15**

**Page 12, lines 14 to 18 - To oppose the clause.**

**Clause 16**

**Page 12, line 19 to page 13, line 2 - To oppose the clause.**

**Clause 17**

**Page 13, lines 3 to 27 - To oppose the clause.**

**Clause 18**

**Page 13, line 28 to page 15, line 22 - To oppose the clause.**

**Clause 19**

**Page 15, line 23 to page 16, line 3 - To oppose the clause.**

**Clause 20**

**Page 16, lines 4 to 28 - To oppose the clause.**

**Clause 21**

**Page 17, lines 2 to 13 - To oppose the clause.**

**Clause 22**

**Page 17, lines 14 to 28 - To oppose the clause.**

**Clause 23**

**Page 18, lines 1 to 11 - To oppose the clause.**

**Clause 24**

**Page 18, lines 12 to 30 - To oppose the clause.**

**Clause 25**

**Page 19, lines 2 to 8 - To oppose the clause.**

**Clause 26**

**Page 19, lines 9 to 12 - To oppose the clause**

**Clause 27**

**Page 19, lines 13 to 22 - To oppose the clause.**



**Clause 28**

**Page 19, line 23 to page 20, line 3 - To oppose the clause.**

**Clause 29**

**Page 20, lines 4 to 21 - To oppose the clause.**

**Clause 30**

**Page 20, line 22 to page 21, line 7 - To oppose the clause.**

**Clause 31**

**Page 21, lines 8 to 20 - To oppose the clause.**

**Clause 32**

**Page 21, line 21 to page 22, line 4 - To oppose the clause.**

**Clause 33**

**Page 22, lines 5 to 7 - To oppose the clause.**

**Clause 35**

**Page 23, line 9 to page 24, line 3 - To oppose the clause.**

**Clause 36**

**Page 24, lines 11 to 15 - To delete the lines.**

**Clause 41**

**Page 28, line 4 to page 29, line 26 - To oppose the clause.**

**Clause 42**

**Page 30, line 2 to page 31, line 6 - To oppose the clause**

**Clause 43**

**Page 31, lines 20 to 26 - To delete the lines.**

**Page 32, lines 1 to 17 - To delete the lines.**

**Long Title**

**Page 1, lines 6 to 8 - To delete - “responsible parenting orders, to make consequential amendments to the *Children’s Court of Western Australia Act 1988* and the *Young Offenders Act 1994*, and”**

- 3.130 A minority of the Committee (Hons Graham Giffard and Sally Talbot MLCs), finds that the amount of the penalty may act as an incentive for parents to address parenting skills deficits and comply with RPAs and RPOs.

*Clause 20(3): All reasonable efforts to assist parents fail*

- 3.131 This clause provides that a CEO cannot give approval to commence a prosecution unless satisfied that all reasonable efforts to assist and encourage the parents to comply with the RPO have “*failed*”. This begs the question of what ‘failure’ will mean to the relevant CEO who takes advice from various authorised officers under clause 34, such as social work practitioners, psychologists and the like.
- 3.132 ‘Failure’ is difficult to determine if there is a cultural component to a particular case. Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, told the Committee that:

*Often what happens is that from the practitioners’ perspective people are struggling to figure out whether something is bad parenting or is culturally appropriate, and how to determine the difference between the two. An example is that in remote communities the kids are encouraged to be autonomous and independent, and particularly to have no boundaries and no restrictions, because that is how they learn to be practically competent. However, if we take that set of parenting strategies, or skills, if we like, and put that into an urban context, suddenly the very things that make the kids strong and resilient and enable them to learn very quickly are seen as deficits. It is certainly an issue, because in remote areas we have more of a capacity to operate within consistent cultural child-rearing practices,*

*so often the programs are at odds with how Aboriginal people raise their children.*<sup>229</sup>

- 3.133 Ultimately, the CEO of an agency being “*satisfied*” that failure has occurred will arise from a subjective judgment based on that CEO’s perspective and analysis of the information presented and may be different to the same exercise undertaken by the other two CEOs. For example, Mr John Hesketh, Area Manager, Student Services, DET, identified a problem in the process of a DET CEO being satisfied that ‘failure’ may have occurred. From DET’s perspective, “*the child is the client*”, and it is “*not the role*” of DET to “*get into the family*”.<sup>230</sup> Mr Hesketh continued:

*The problem in this case as far as the Department of Education and Training is concerned is that a child is not attending school. The outcome the department wants is for children to attend school. Changing the parents’ parenting skills is a side issue.*<sup>231</sup>

- 3.134 In 2004, DCD made a submission to the OCP’s Discussion Paper on the concept of parenting orders and noted how, before an RPO is pursued, the success of an RPA for each family will be unique. For DCD, “*what constitutes success*” will need to be negotiated between all stakeholders involved in the RPA.<sup>232</sup>
- 3.135 During the Committee’s inquiry process, DCD repeated this concern. DCD said that even in exercising the ultimate coercion the department has, that is, actual removal of a child, DCD “*always focuses on the well being of the child, not on the fulfillment of parental responsibility.*”<sup>233</sup>
- 3.136 In the Committee’s view, if the current cultural thinking of both DET and DCD is reflected in the evidence of their departmental witnesses, then those departments will be challenged during the process of their respective CEOs giving approval to launch a prosecution. The task of a CEO being “*satisfied*” that failure to comply with an RPO has occurred, will be made even more difficult given that up to 10 or more agencies may have contributed and shared information from each of their perspectives, about a particular parent to the relevant CEO.
- 3.137 Whilst the Committee accepts that there needs to be interagency agreement as to what constitutes ‘failure’ to comply with an RPO, at a site visit to Langford House, where the first pilot of *ParentSupport* is being trialled, the Committee observed specific,

<sup>229</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p2.

<sup>230</sup> Mr John Hesketh, Area Manager, Student Services, DET, *Transcript of Evidence*, 5 April 2006, p2.

<sup>231</sup> *Ibid*, p7.

<sup>232</sup> DCD submission to the OCP’s Discussion Paper phase, March 2004, p4.

<sup>233</sup> Ms Susan Hudd, Director, Policy and Program Development, DCD, *Transcript of Evidence*, 5 April 2006, p2.

measurable determinants of ‘success’ and ‘failure’. In the Committee’s view, the Langford House trial demonstrates that ‘success’ or ‘failure’, whilst not necessarily quantifiable outside a specific context, does not have to be subjective.

## Part 5 Division 2: Review and Appeal

### Clause 24

3.138 Clause 24 provides for either party to the proceedings to appeal the decision of the Children’s Court to the Court of Appeal. The Committee asked the OCP whether the cost of a bringing an appeal in the Court of Appeal would be an option for poor or marginalised families.

3.139 The OCP explained that ‘not-for-profit’ bodies offer legal services as well as the pro bono scheme promoted through the Law Society. Therefore, “*it is possible* [that the clause] *is not completely illusory*” and that to describe clause 24 as illusory would be a misrepresentation.<sup>234</sup>

3.140 The Committee is of the view that although clause 24 is available to parents seeking an appeal of the decision to impose an interim RPO or RPO, they are unlikely to appeal for financial reasons. In the Committee’s view the clause is illusory for unrepresented parents wishing to exercise their full rights. However, it is not illusory for the CEO of a relevant agency appealing a decision, with access to financial and human resources. The OCP admitted that appealing is:

*a perennial problem and is no different from any legislation that may result in legal proceedings of some kind. ... It is indeed a challenge.*<sup>235</sup>

3.141 The Committee sought clarification from OCP about what would occur if an appeal to the Court of Appeal was based on hearsay evidence. (See paragraph 3.146 below for an explanation of the nature of hearsay evidence)

3.142 The OCP explained that an appeal to the Court of Appeal will be heard according to the *Supreme Court (Court of Appeal) Rules 2005* and particularly rule 25 which provides for a re-hearing. Rule 30 then provides for the Court of Appeal to have access to all transcripts and documents taken in evidence by the primary court,<sup>236</sup> including records of any restricted information.<sup>237</sup> The OCP explained that the Court of Appeal is:

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<sup>234</sup> Mr John Lightowlers, Solicitor, Department of the Premier and Cabinet, Public Sector Management Division, *Transcript of Evidence*, 8 February 2006, p16.

<sup>235</sup> Mr Michael Thorn, Adviser, Crime and Justice, Department of the Premier and Cabinet, *Transcript of Evidence*, 28 June 2006, p7.

<sup>236</sup> Letter from Mr Michael Thorn, Director, OCP, dated 3 March 2006, p7.

<sup>237</sup> Rule 30(4), *Supreme Court (Court of Appeal) Rules 2005*.

*empowered to determine by its own Rules the extent to which the rules of evidence are to apply in appeals to that Court and therefore the extent to which it will receive hearsay evidence.*<sup>238</sup>

*Clause 31(1): the rules of evidence*

- 3.143 In proceedings for an interim RPO or RPO, the Court is not bound by the rules of evidence. These rules derive either from the common law or are statutorily provided for in the *Evidence Act 1906*.<sup>239</sup> The Court may inform itself from the rules.
- 3.144 The OCP explained that clause 31(1) ensures an informal procedure in the Children's Court and is not unique, for example, there are similar provisions in child protection proceedings under the *Children and Community Services Act 2004*. The State Administrative Tribunal also operates outside the strict rules of evidence.<sup>240</sup>
- 3.145 Mr John Lightowlers, Solicitor, Department of the Premier and Cabinet, Public Sector Management Division, explained that a strict rule of evidence is that it must be based on the 'best-evidence rule'<sup>241</sup> rather than on hearsay, which may well impede the court in taking the evidence that it thinks it needs to make a decision. The purpose of clause 31(1) is to ensure that the court is in control of the evidence that it needs rather than the parties objecting to evidence on technical legal grounds.<sup>242</sup>

*Clause 32(2): the rule against hearsay*

- 3.146 Clause 32(2) provides that hearsay evidence is admissible in line with the best evidence rule. The rule against hearsay provides that where a witness gives evidence as to the out of court assertion of another person who is not called as a witness, the evidence is inadmissible when used as original evidence to establish the fact that it was made.<sup>243</sup> The rationale for the rule includes the fact that the evidence may be unreliable and the lack of opportunity to cross-examine the uncalled witness.

<sup>238</sup> Letter from Mr Michael Thorn, Director, OCP, dated 3 March 2006, p7.

<sup>239</sup> Section 4, *Evidence Act 1906* states that all its provisions, except where a contrary intention appears, apply to every legal proceeding. Section 5 states that the provisions are in addition to and do not lessen any powers, rights, or rules of evidence existing at common law, or given by any law at any time in force in the State. Thus, under clause 31(1), the Court may avail itself of the *Evidence Act 1906* but is not bound to its provisions.

<sup>240</sup> Section 32(2), *State Administrative Tribunal Act 2004*.

<sup>241</sup> The best evidence rule provides that where there is nothing better, recourse may be had to evidence which would be inadmissible in other cases. JD Heydon, *Cross on Evidence, Seventh Australian Edition*, Butterworths, Australia, (2004), p98.

<sup>242</sup> Mr John Lightowlers, Solicitor, Department of the Premier and Cabinet, Public Sector Management Division, *Transcript of Evidence*, 8 February 2006, p11.

<sup>243</sup> *R v Murphy* (1985) 4 NSWLR 42 at 61.

*Clause 32: The evidence of children*

- 3.147 The Committee noted that in proceedings for an interim RPO or RPO, the Court is (again) not bound by the rules of evidence when hearing the evidence of children.
- 3.148 At common law a child is a competent witness and may be sworn if he/she has the requisite understanding of the nature of the oath.<sup>244</sup> In Western Australia, the evidence of children is governed by sections 106A-T of the *Evidence Act 1906*. Thus, a child aged between 12 and 18 is a competent witness.<sup>245</sup> However, unlike other jurisdictions, if aged under 12, a Western Australian child is competent to take an oath where the Court is satisfied that the child understands that there is an obligation to tell the truth.<sup>246</sup>
- 3.149 The general rule is that “*all competent witnesses are compellable*”.<sup>247</sup> This means that once a judge decides that a child is competent, the child is then compellable to give evidence in a court. Section 106G of the *Evidence Act 1906* expressly provides for an unrepresented accused to cross-examine a child. In such a scenario, sections 106E to G would apply as they mandate support, assistance and protection for a child under 12 giving that evidence.
- 3.150 In contrast, clause 32 of the Bill expressly provides for a child under 15 to be both compelled to give evidence and to be cross examined in proceedings. Mr John Lightowlers, Solicitor, Department of the Premier and Cabinet, Public Sector Management Division, explained that clause 32 mirrors section 150 of the *Children and Community Services Act 2004*, which sets out evidential procedures in relation to care and protection applications. Mr Lightowlers said:

*in protection proceedings - that is, civil proceedings - [children] may be compelled to give evidence or be cross-examined only with the leave of the court. It then sets out the special criteria. [Clause 32] follows exactly the same pattern.*<sup>248</sup>

<sup>244</sup> *Cheers v Porter* (1931) 46 CLR 521 at 531.

<sup>245</sup> Section 106B(2), *Evidence Act 1906*.

<sup>246</sup> Section 106B, *Evidence Act 1906*.

<sup>247</sup> Compellable is that state of being able to be made to give evidence. JD Heydon, *Cross on Evidence, Seventh Australian Edition*, Butterworths, Australia, 2004, p376.

<sup>248</sup> Mr John Lightowlers, Solicitor, Department of the Premier and Cabinet, Public Sector Management Division, *Transcript of Evidence*, 28 June 2006, p8. The OCP advised that clause mirrors section 106R, *Evidence Act 1906*; section 217, *Family Court Act 1997*; and sections 53A-53E, *Restraining Orders Act 1997*.

3.151 The only qualification in the Bill on the ability to compel and cross examine, is the requirement for leave of the Court. Leave can only be granted if the Court is satisfied that the child is unlikely to be emotionally traumatized, intimidated or distressed.<sup>249</sup>

3.152 Mr Lightowlers described clause 32 as an:

*actual constraint on the court in allowing a child to be examined and cross-examined. It is an additional check on children being exposed to the full rigours of the court.*<sup>250</sup>

3.153 The YLS argued that the Bill represents an intrusion into private relationships where it is the parents' role to rear their child, not the State's.<sup>251</sup> The Committee considered the argument that compelling a child to give evidence against his/her parent and being cross examined by the parent's counsel may be inappropriate given the power imbalance in these private relationships. There is potential for further deleterious impact on the well being of the child and exacerbation of already dysfunctional relationships, infringing clause 6 of the Bill, the 'best interests of the child' principle. Conversely, instead of the child being emotionally traumatized, intimidated or distressed, he/she may be volatile and abusive towards the parent in Court.

3.154 The Committee has particular concern for those parents who will appear unrepresented in the Court. The Committee considered the argument that compulsion and cross examination of a child by an unrepresented parent may be inappropriate mechanisms during a proceeding to determine whether the Court should make an interim RPO or RPO against the parent. By the time an interim RPO or RPO is brought, the relationship between parent and child in a courtroom setting may be adversarial or combative. Indirect questioning through the presiding judge may provide distance between parent and child.

3.155 The Committee's concern about clause 32 is mitigated by the fact that when a child is compelled to give evidence or be cross examined, leave of the Court to do so can be withdrawn at any time. Further, the Committee considered that enhancements made to the *Evidence Act 1906* in 1992 (which inserted broad, protective measures for child witnesses in a proceeding that comes within the provisions of Schedule 7<sup>252</sup> of that Act) and also in 1994, will be made available to proceedings for the making of interim

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<sup>249</sup> Clause 32(2)(a) and (b).

<sup>250</sup> Mr John Lightowlers, Solicitor, Department of the Premier and Cabinet, Public Sector Management Division, *Transcript of Evidence*, 28 June 2006, p9.

<sup>251</sup> Submission No 2 from the YLS, 23 December 2005, p5.

<sup>252</sup> Amongst other things, a Schedule 7 proceeding includes a proceeding in which a person stands charged with an offence under a section or chapter of *The Criminal Code* mentioned in Part B or C. Also a proceeding comes within the provisions of the Schedule if it is an application under Part 4 (protection and care of children) or 5 (protection proceedings), *Children and Community Services Act 2004*.

RPOs and RPOs by the insertion of new Government proposed clause 42 in the Bill.<sup>253</sup> This means that protections such as the video-taping of a child's evidence<sup>254</sup> may be made available to a child witness in those proceedings. The Committee finds proposed new clause 42 improves the Bill.

### Clause 33

- 3.156 This clause states that the Children's Court cannot make an order for the payment of any costs of proceedings. This means that both the CEO of the relevant department and the parent are denied any award of the costs incurred in bringing proceedings for an RPO if either is successful. Whilst not onerous on a CEO, costs incurred by a parent defending the proceedings may be substantial.
- 3.157 The Committee noted that clause 33 is mitigated by section 5 of the *Official Prosecutions (Accused's Costs) Act 1973* which provides for a successful accused to be entitled to costs at both the summary and appeal level.<sup>255</sup> Section 3 states that the *Official Prosecutions (Accused's Costs) Act 1973* applies notwithstanding the provisions of any other Act.

### Clause 34

- 3.158 Clause 34 stipulates that an authorised officer can be the CEO of the Departments of Community Development, Education, Justice or a public service officer designated by the CEO of the department principally assisting in the administration of the legislation.
- 3.159 The APS stressed the importance of a minimum set of clinical competencies required of authorised officers dealing with the specialised area of family dynamics and child behavioural problems. The APS consider it inconceivable such responsibility be conferred on non-clinical staff of government departments.<sup>256</sup> The Committee considers that this is subject matter best dealt with by regulation under clause 40.

<sup>253</sup> As well as their variation, revocation or reconsideration. See Supplementary Notice Paper No 41, Issue No 3 dated 16 October 2006, p5.

<sup>254</sup> Section 106I, *Evidence Act 1906*.

<sup>255</sup> Under section 4, an "accused" means a person charged with an offence in an 'official prosecution'. "Official prosecution" means proceedings in a summary court against a person charged with an offence by a public official acting or purporting to act by virtue of his office, and includes proceedings on appeal. "Court" includes both a summary and appeal court. "Summary Court" means the Magistrates Court or the Children's Court.

<sup>256</sup> Submission No 9 from the APS, 6 February 2006, p6.



*Clause 36*

- 3.160 Clause 36 provides a \$12,000 fine and imprisonment for one year for disclosing confidential information. The Committee considers that this is a substantial and necessary penalty given that the Bill deals with private family relationships.
- 3.161 The Committee considers that clause 36 as well as the Government's enhancements in proposed new clause 37 which the Committee supports, will be of particular assistance to Aboriginal families. Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, emphasised the importance of confidentiality. when she said:

*I often notice that people assume that because the whole of the community is involved ..., confidentiality is not as relevant to Aboriginal people as it is to non-Aboriginal people. Quite often when we go to a community we can engage in discussion with a key person and suddenly other people become involved in that process but we do not stop to ensure that the person we are talking to understands what the discussion will involve. We do not find out whether it is okay for the other people to hear that discussion. I suppose the training we do involves considering how we can ensure that the primary client has an understanding of the limits of confidentiality and what we say to other people, because, particularly in Aboriginal communities, there are issues around what we call avoidance relationships, for example, whereby certain information cannot be passed onto certain people and certain people cannot talk to certain other people. Confidentiality does not allow for those cultural issues to be taken into account. Sometimes it is just assumed that it is okay for everyone to have the information.<sup>257</sup>*

- 3.162 The Committee observed that when the Court is considering the penalty for breaching confidentiality, it can avail itself of the sentencing alternatives in section 42 of the *Sentencing Act 1995*. Section 42 includes the following sentencing options:
- impose no sentence and order the release of the offender;
  - impose a CRO and order the release of the offender;
  - impose a fine and order the release of the offender;
  - impose a Community Based Order and order the release of the offender;

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<sup>257</sup> Dr Tracy Westerman, Managing Director, Indigenous Psychological Services, *Transcript of Evidence*, 3 May 2006, p10.

- impose an Intensive Supervision Order and order the release of the offender;
- impose suspended imprisonment and order the release of the offender; or
- impose a term of imprisonment.

*Clause 36(1)(e)*

3.163 Clause 36(1)(e) states:

(1) *A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of information obtained in the course of duty, except -*

(e) *with the written consent of the Minister or the person to whom the information relates;*

3.164 The Committee noted that clause 36(1)(e) refers to “*the Minister*”. By contrast, a Government proposed amendment to the Bill on Supplementary Notice Paper No 41, Issue No 3, in the name of the Parliamentary Secretary to the Minister for Community Development dated 16 October 2006, refers, in proposed new clause 37(2), to a “*CEO*” giving written authorisation to publish information or material that identifies a person under 18 years. The Committee sought clarification of this apparent inconsistency. In light of the Committee’s concern, the OCP advised that it had reconsidered this matter and:

*determined that the Parental Support and Responsibility Bill should be consistent with the Children and Community Services Act 2004 regarding clause “Confidentiality of information” and “Restriction on publication of certain information or material”, hence the different consent from the Minister in relation to the former and the CEO who applied for the responsible parenting order in the latter.<sup>258</sup>*




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**Hon Graham Giffard MLC**

**Chair**

**Date: 2 November 2006**

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<sup>258</sup> Email correspondence from Ms Hilary MacWilliam, Manager, Responsible Parenting Initiative, OCP, Department for Community Development, 17 October 2006, p1.

**APPENDIX 1**  
**THE COMMITTEE'S RECOMMENDED AMENDMENTS IN STATUTORY**  
**FORM**



# APPENDIX 1

## THE COMMITTEE'S RECOMMENDED AMENDMENTS IN STATUTORY FORM

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**1 The following amendments are recommended by the Committee to the Parental Support and Responsibility Bill 2005:**

**Clause 3**

**Committee Recommendation:** To move -  
Page 3, lines 26 and 27 — To delete the lines.

**Committee Recommendation:** To move -  
Page 4, lines 11 and 12 — To delete the lines.

**Clause 4**

**Committee Recommendation:** To move -  
Page 4, line 18 — To delete “, government agency or court” and insert instead —  
“ or government agency ”.

**Clause 5**

**Committee Recommendation:** To move -  
Page 5, after line 9 — To insert —

“  
For the purposes of this section, “responsibility” includes but is not limited  
to all the duties, powers, responsibilities and authority which, by law,  
parents have in relation to children.  
”.

**Clause 6**

**Committee Recommendation:** To move -  
Page 5, line 12 — To delete “or a court”.

**Clause 7**

**Committee Recommendation:** To move -  
Page 5, lines 24 and 25 — To delete “or any responsible parenting order directed towards  
them”.

**Clause 8**

**Committee Recommendation:** To move -  
Page 5, line 28 — To delete “or a court”.

**Clause 9**

**Committee Recommendation:** To move -  
Page 6, after line 26 — To insert —

“

- (6) The *Interpretation Act 1984* sections 41, 42, 43 and 44 apply to the guidelines as if the guidelines were regulations.

”

**Committee Recommendation:** To move -  
Page 7, line 5 — To delete “or responsible parenting order”.

**Clause 12**

**Committee Recommendation:** To move -  
Page 10, lines 3 to 16 — To oppose the clause.

**Clause 13**

**Committee Recommendation:** To move -  
Page 10, line 17 to page 11, line 12 — To oppose the clause.

**Clause 14**

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**Clause 25**

**Committee Recommendation:** To move -

Page 19, lines 2 to 8 — To oppose the clause.

**Clause 26**

**Committee Recommendation:** To move -

Page 19, lines 9 to 12 — To oppose the clause.

**Clause 27**

**Committee Recommendation:** To move -

Page 19, lines 13 to 22 — To oppose the clause.

**Clause 28**

**Committee Recommendation:** To move -

Page 19, line 23 to page 20, line 3 — To oppose the clause.

**Clause 29**

**Committee Recommendation:** To move -

Page 20, lines 4 to 21 — To oppose the clause.

**Clause 30**

**Committee Recommendation:** To move -

Page 20, line 22 to page 21, line 7 — To oppose the clause.

**Clause 31**

**Committee Recommendation:** To move -

Page 21, lines 8 to 20 — To oppose the clause.

**Clause 32**

**Committee Recommendation:** To move -

Page 21, line 21 to page 22, line 4 — To oppose the clause.

**Clause 33**

**Committee Recommendation:** To move -

Page 22, lines 5 to 7 — To oppose the clause.

**Clause 35**

**Committee Recommendation:** To move -

Page 23, line 9 to page 24, line 3 — To oppose the clause.

**Clause 36**

**Committee Recommendation:** To move -

Page 24, lines 11 to 15 — To delete the lines.

**Clause 41**

**Committee Recommendation:** To move -

Page 28, line 4 to page 29, line 26 — To oppose the clause.

**Clause 42**

**Committee Recommendation:** To move -

Page 30, line 2 to page 31, line 6 — To oppose the clause.

**Clause 43**



**Committee Recommendation:** To move -

Page 31, lines 20 to 26 — To delete the lines.

**Committee Recommendation:** To move -

Page 32, lines 1 to 17 — To delete the lines.

### **Long Title**

**Committee Recommendation:** To move -

Page 1, lines 6 to 8 — To delete “**responsible parenting orders, to make consequential amendments to the *Children’s Court of Western Australia Act 1988* and the *Young Offenders Act 1994*, and”.**



**APPENDIX 2**  
**STAKEHOLDERS TO WHOM THE COMMITTEE WROTE**



## APPENDIX 2

### STAKEHOLDERS TO WHOM THE COMMITTEE WROTE

NAME	ORGANISATION
Major Raymond Finger Divisional Commander	Salvation Army Western Australia Division
Ms Lisa Baker Executive Director	Western Australian Council of Social Services Inc
Ms Rae Walter Chief Executive Officer	Ngala
Mr John Clapton Chairperson	Youth Affairs Council of Western Australia
Ms Colleen Hayward Manager	Kulunga Research Network Telethon Institute for Child Health Research
His Honour Judge Denis Reynolds President	Children's Court of Western Australia
Mr Denis Eggington Chief Executive Officer	Aboriginal Legal Service of Western Australia Inc
Ms Celia Searle President	The Law Society of Western Australia
The Hon David K Malcolm AC Citwa Chief Justice of Western Australia	Supreme Court of Western Australia
Mr George Turnbull Director	Legal Aid Western Australia
Ms Sue Finnigan State Manager	Department of Family and Community Services
Associate Professor Susan Fyfe Acting Head of School	School of Public Health Curtin University of Technology
Professor Paul Moyle Head of School	School of Law and Justice Edith Cowan University
Professor Michael Gillooly Dean	School of Law, Notre Dame University
Professor William Ford School of Law	University of Western Australia
Ms Jane Brazier Director General	Department for Community Development
Mr Lincoln George Development Officer	Office for Children and Youth Youth Advisory Council

NAME	ORGANISATION
Mr Nick Francis Executive Officer	Community Legal Centres Association (WA) Inc
His Honour Judge Hal Jackson Chairperson	Youth Legal Service Inc Western Australia

**APPENDIX 3**  
**WRITTEN SUBMISSIONS RECEIVED**





## APPENDIX 3

### WRITTEN SUBMISSIONS RECEIVED

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No	Name	Organisation
1	Mr Peter Evans	Member of the public
2	Ms Cheryl Cassidy-Vernon Manager	Youth Legal Service Inc Western Australia
3	Ms Karyn Lisignoli Executive Officer	Youth Affairs Council of WA Inc
4	His Honour Judge Denis Reynolds President	Children's Court of Western Australia
5	Ms Katrina Carlisle Manager Court Officers Unit	Aboriginal Legal Service of Western Australia Inc
6	Mr George Turnbull Director of Legal Aid	Legal Aid Western Australia
7	Ms Lisa Baker Executive Director	Western Australian Council of Social Services Inc
8	Captain Robyn Fernihough Divisional Social Program Secretary Australia	The Salvation Army, Western Australia Division
9	Professor Lyn Littlefield OAM, FAPS Executive Director	The Australian Psychological Society Ltd



## **APPENDIX 4**

### **WITNESSES WHO APPEARED BEFORE THE COMMITTEE**



## APPENDIX 4

### WITNESSES WHO APPEARED BEFORE THE COMMITTEE

NAME	ORGANISATION	DATE
Mr Michael Thorn Director	Office of Crime Prevention Department of the Premier and Cabinet	14 December 2005
Ms Hillary MacWilliam Manager, Responsible Parenting Initiative	Office of Crime Prevention Department of the Premier and Cabinet	14 December 2005
Ms Wendy Attenborough Principal Policy Officer	Office of Crime Prevention Department of the Premier and Cabinet	14 December 2005
Mr John Lightowlers General Counsel	Public Sector Management Department of the Premier and Cabinet	14 December 2005
Mr Michael Thorn Director	Office of Crime Prevention Department of the Premier and Cabinet	8 February 2006
Ms Hillary MacWilliam Manager, Responsible Parenting Initiative	Office of Crime Prevention Department of the Premier and Cabinet	8 February 2006
Ms Wendy Attenborough Principal Policy Officer	Office of Crime Prevention Department of the Premier and Cabinet	8 February 2006
Mr John Lightowlers General Counsel	Public Sector Management Department of the Premier and Cabinet	8 February 2006
Judge Hal Jackson Chairman	Ministerial Advisory Council on Child Protection	8 March 2006
Ms Karyn Lisignoli Executive Officer	Youth Affairs Council of Western Australia	8 March 2006
Ms Wendy Murray Director	Planning Policy and Review Department of Corrective Services	8 March 2006
Ms Annette Wells Director	Community Justice Services Department of Corrective Services	8 March 2006
Ms Tonia Brajcich Manager, Law and Advocacy Unit	Aboriginal Legal Service of Western Australia	8 March 2006
Ms Lorraine Allen Manager, Family Law Unit	Aboriginal Legal Service of Western Australia	8 March 2006
Superintendent Duane Bell Acting Director	Corporate and Community Development, WA Police Service	8 March 2006

<b>NAME</b>	<b>ORGANISATION</b>	<b>DATE</b>
Professor Sven Silburn Director	Centre for Developmental Health, Curtin University of Technology and Telethon Institute for Child Health Research	22 March 2006
Mr John Hesketh Area Manager	Student Services, Department of Education and Training	5 April 2006
Ms Susan Hudd Director	Policy and Program Development, Department for Community Development	5 April 2006
Mr John Hancock Director	Operational Policy Department for Community Development	5 April 2006
Mr Henry Councillor Chief Executive Officer	Kimberley Aboriginal Medical Services Council	19 April 2006
Dr Tracy Westerman Managing Director	Indigenous Psychological Services	3 May 2006