

# **STANDING COMMITTEE ON LEGISLATION**

## **PARENTAL SUPPORT AND RESPONSIBILITY BILL 2005**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 8 FEBRUARY 2006**

### **Members**

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

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**Hearing commenced at 10.50 am**

**ATTENBOROUGH, MS WENDY**  
**Principal Policy Officer, Office of Crime Prevention,**  
**Department of the Premier and Cabinet, examined:**

**LIGHTOWLERS, MR JOHN**  
**Solicitor, Department of the Premier and Cabinet,**  
**Public Sector Management Division, examined:**

**MacWILLIAM, MS HILARY**  
**Manager, Responsible Parenting Initiative, examined:**

**THORN, MR MICHAEL**  
**Director, Office of Crime Prevention, examined:**

**CHAIR:** On behalf of the committee, welcome back to the meeting. Thank you for attending to assist with our inquiry. You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

**The Witnesses:** Yes.

**CHAIR:** Today's discussions are public and are being recorded. As occurred previously, a copy of the transcript will be provided to you. Please note that until such time as a transcript of your public evidence is finalised, the transcript should not be made public. Premature publication of the transcript or inaccurate disclosure of public evidence may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. If you wish to make a confidential statement, you can ask the committee to consider taking your statement in private. If the committee agrees, the public will be asked to leave the room before we continue.

I will not invite you to make an opening statement because you made opening statements at the last hearing. You might like to comment very briefly if anything arose from your previous presentation to the committee.

**Mr Thorn:** We do not have any extra comments.

**CHAIR:** I refer to the parent support teams, which you referred to last time. Where do you anticipate these teams will be located? Please clarify whether they will act as a unit within one department or be spread across a number of departments such as justice, DCD and education. Please explain how these teams will be managed.

**Ms MacWilliam:** At this point, one site is operating in the south east metropolitan area and we are about to open a second site in the east metropolitan area. We are operating on police district boundaries that are aligned to local government boundaries. That affords us a statistical base related to the ABS so we can build-up and drill down. That is part of the reason we are doing that. We expect that we will be able to open southern metropolitan police district and Peel together in July this year. Following from there, we expect to open a fourth metropolitan site in Joondalup to cover the north west, west metropolitan and probably the central police district. The regional sites will reflect the regional police districts: the south west, great southern, Kalgoorlie, Murchison, Gascoyne, Pilbara and Kimberley in the north west. We are developing slightly different ways of

operating in each of the regional centres operate. When we move in to set up a new site we consult widely with the community to find out their presenting needs, because they differ from place to place. We consult with local stakeholders, agencies and, of course, indigenous groups and corporations to identify what is required in the particular area. We are developing a much more specific package in the remote areas. We will undertake a feasibility study to decide whether it will commence in Fitzroy or Warburton as a trial site. We expect that to take on less of a government and more of a community profile operation.

The parent support teams will be answerable to a strategic management group. At present, the whole operation sits within the Department of the Premier and Cabinet. However, at some point in the future, once they reach a critical mass, we will move to another appropriate department to assist us with administration. However, we do not see this operation being subsumed into a line agency, because there is a risk involved in that; namely, it is very difficult to work across agencies in a collaborative way from a line agency. For example, people will say that if you are sitting in education, that is your job; you just do that, or if you are in DCD, they will say, "Hands off; you're doing that now." Operations such as Strong Families have encountered those experiences. We will be looking to link with a coordinating agency that is operating at a slightly higher level than a line agency.

The structure is such that the strategic management area, which was the original policy group, is morphing into the strategic management area. There is me, a policy group, a clinical services group and a small corporate support group. Then, of course, in each of the areas level 7 managers will be expected to fulfil functions of budget management and human resource management and to ensure the bona fides and integrity of the program.

**CHAIR:** Will that Joondalup office take in three districts?

**Ms MacWilliam:** It will take in three. Reflected there is the population base and the expectation of case load, so we are looking at quite a mix. For example, there is a human mix of population within Stirling. It often looks as though Stirling does not have a crime problem because the number of well-to-do families dilute the statistics. Within the Stirling area we are looking at pockets of difficulty.

[11.00 am]

**Mr Thorn:** To summarise that, there are a couple of things. First, parent support has been rolled out on a progressive basis. We started in the south east corridor, and the introductory work has been done in the east metro police district, ready to kick off with the services there. The reason we have been doing that is that we are in a learning phase, trying to understand how best to deliver the service. Also, there is a really important need to build up relationships with all the key stakeholders, in particular the departments of education, what was justice, police, housing and works and community development. We have not sought to leap in to provide this service on a statewide basis from day one. We certainly anticipate that the service delivery model that we will need in non-metropolitan Western Australia will be different from that needed in the metropolitan area. Even there, we think that two quite different approaches will be needed for remote communities as opposed to perhaps more conventional larger communities such as Geraldton, Port Hedland and those sorts of places. The function of the policy group that Hilary mentioned is to work out how best to deliver that. Our expectation is that in remote places such as Warburton, for instance, we will look to work with non-government organisations and in partnership with perhaps some state agencies to manage any needs that arise from parent support responsibilities. The model that has been developed so far, however - the responsible parenting initiative - is a discrete unit within the Office of Crime Prevention, and that is simply because it had to be housed somewhere to get it off the ground. It operates with a fair degree of autonomy. The service delivery model is really about discrete teams. The south east corridor has its own manager and its own casework team.

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**CHAIR:** How big is it?

**Ms MacWilliam:** The level 7 manager will sit across the south east team and the east team. In any one team we have five caseworkers and almost three FTEs for home visitor contracts, and they are supported by a business development officer.

**CHAIR:** "A" business development officer.

**Ms MacWilliam:** Yes.

**Mr Thorn:** To manage the corporate services functions that arise with some -

**CHAIR:** There will be about nine FTEs in each team.

**Ms MacWilliam:** That is right.

**CHAIR:** Will they be ever-expanding, or will you divide up the regions once the case load increases? Is the optimal FTE figure about nine?

**Mr Thorn:** Our first guess was the staffing complement that Hilary has just mentioned; that is, five or six staff for the south east corridor. We thought we would be replicating that in the east. We have found that the demand is not as high at this stage. That is partly down to the flow of cases to parent support in the first instance, but we anticipate that we will need fewer staff than our first expectations suggested.

**CHAIR:** You will not be increasing the regions; you will be decreasing the size of your team.

**Mr Thorn:** No. For geographic reasons, there will be a team of caseworkers in the south east and a team of caseworkers in the east managed by one manager and maybe a similar sort of model in the north west corridor. In the south, based on what I have seen so far, it is my expectation that there will be one manager for the south metro police district and Peel district, and maybe one and a half teams or someone based in the Fremantle area and somewhere down Mandurah way. That is our expectation.

**Ms MacWilliam:** The team is put together on the basis of the capacity to service. We worked it out that the team needs the capacity to service at least 300 referrals a year, and that is what we have worked out the case loads for each of the caseworkers on. Obviously, we expect that some areas will get far more referrals than others, so we still have the latitude to move staff around within the metropolitan area and, indeed, to regional areas as is necessary, because there, of course, distance is the issue.

**Mr Thorn:** That case load of 300 per team is a pretty good indicative figure at the start for thinking about how the various teams might be staffed.

**CHAIR:** I understand. I understand that that is what happens in the mental health area as well. There is a certain complement in the team and they do not keep adding psychologists because that becomes a mini bureaucracy; they actually prefer to have another team in a different discrete region to manage a certain case load and that is the optimum. The same sort of principle runs through what you will be doing.

**Mr Thorn:** Yes. It is literally that team, so it is a complement of people with a spread of skills. They are not all social workers; they are not all psychologists. We have a group of people on the team who do not have professional qualifications, for instance, but who have long experience working in this area.

**CHAIR:** With regard to the information-sharing aspect - it probably confirms what you have said previously - one of the purposes of the machinery of government review in 2001 was to produce larger ministries sharing information. Is it your view that that has not happened to a desirable degree and that what is required is some legislative change to enable information sharing to the extent that you will seek?

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**Mr Thorn:** That is correct. Certainly the Young Offenders Act is very strict in limiting the exchanging of information by corrective services workers. There are very severe penalties for breaching that legislation. That is why we sought to introduce those aspects to the bill. This is not a new problem. It has been well recognised over a number of years. In fact, there have been some attempts to try to improve communication through some administrative fiats. Under the old Safer WA system, the director generals' group put together some advice, proposals and policies etc that were issued as a circular by the Premier in 2003, which was designed to encourage agencies to make the most of the opportunities they have to share information at the moment. Later on, although it partly addressed some of the deficiencies, the Gordon inquiry found that there was a need to specifically address the information-sharing matters that constantly confound people working in this area. The government made the commitment to prepare legislation addressing those matters for the consideration of Parliament. I understand that that has been progressed through the privacy bill deliberations and considerations. I think that is anticipated to come before Parliament sometime this year. In the meantime, of course, there are these very real problems. If it were not contained in our bill, the utility of the whole concept would be severely hampered.

**Hon GIZ WATSON:** I understand that one of the reasons for strict confidentiality matters for juveniles is the issue that arose when *The West Australian* published pictures on the front page and ultimately was criticised and penalised. Surely you will have the same sorts of problems with juveniles. Basically, there are particular legal provisions for protecting the identity of juveniles.

[11.10 am]

**Mr Thorn:** I suppose that you cannot stop people breaking the law, and in *The West Australian* case, the newspaper was ultimately sanctioned by the courts for breaking the law. This legislation proposes very serious penalties, which reflect the Young Offenders Act.

**Ms Attenborough:** They certainly reflect the Children and Community Services Act penalty of \$12 000 or two years' imprisonment for breaches of confidentiality.

**Mr Thorn:** I acknowledge your point but I suppose it is an issue of actually trying to do the job. Legislation has been sought to address the problems that are seen in managing such a program efficiently. The protections and safeguards have been put in to try to prevent the untoward outcomes of people not respecting confidentiality requirements.

**Hon GIZ WATSON:** But surely this has been one of the criticisms that has arisen in submissions: if you have a system that stigmatises parents, who, in most cases, are likely to be single mothers, everybody will know who their kids are. If you suggest criminal penalties for people who do not follow parenting orders, you actually expose those children to being labelled as part of a bad family or as bad children in a specific legal way and not just in general community opinion.

**Ms MacWilliam:** I think that is one of the reasons for choosing the Children's Court as the court to manage, for example, applications for orders. Prior to any order application, the confidentiality is certainly protected by professionals within agencies and in the parent support team. Strict guidelines are being developed about how information is to be shared and stored.

**Hon GIZ WATSON:** How realistic is that in a small Aboriginal community in regional Australia?

**Ms MacWilliam:** I think it is a case in which everybody knows everybody's business in a small Aboriginal community. That is why we seek to develop a very different looking model -

**Hon GIZ WATSON:** Is that one that involves criminal sanctions?

**Mr Thorn:** That would be no different from any child protection issue or offence issue that might arise in a small community today.

**Hon GIZ WATSON:** Are you also aware that the Children's Court wrote opposing this approach and suggested that it could be better and adequately resourced through interagency cooperation, and that the same result could be achieved within the existing legislative framework?

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**Mr Thorn:** We are not aware of that.

**Hon GIZ WATSON:** That was in the Children's Court's submission to your original discussion paper. It is on page 2 of its submission; it is from the Children's Court from Judge O'Brien.

**Mr Thorn:** I would think that things have moved on from that point. That would have been its response to the discussion paper.

**Hon GIZ WATSON:** It was its response to the submission to this inquiry. It is still opposed.

**Mr Thorn:** Is that the Children's Court?

**Hon GIZ WATSON:** Yes. Do you want me to read it?

**Mr Thorn:** Sure. By all means.

**Hon GIZ WATSON:** It is of the same view that the existing legislative framework can deal with these matters. There is a summary of points at the end of the submission -

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.

I am concerned about the enforcement of court orders.

Etcetera, etcetera. It further reads -

I am concerned that confusion, duplication and a fragmented approach to parenting will result from the duality of the proposed legislation and the *Children and Community Services 2004*.

That was the point I raised the last time you were before us. So, these people are not supportive.

**Mr Thorn:** Without having seen that submission, I have to say that I am a little confused. We have worked pretty closely with the President of the Children's Court. His advice was sought on a number of aspects of the draft bill. At all times, he has been supportive of what we have been doing. I am at a loss to understand. I am not sure whether he has signed it off or whether it is from the Children's Court.

**Hon GIZ WATSON:** It is from Judge Reynolds.

**Mr Thorn:** I am at a loss to understand how we have arrived at that position, quite frankly.

**CHAIR:** That is a public submission. We can arrange for you to at least take away a copy of that with you so that you can look at it if you want to -

**Mr Thorn:** We can comment on it.

**CHAIR:** If we finish early today, we might have the opportunity for you to come back to that having had a look at what he had to say. We have only just received that submission as a committee today. We have not had the opportunity to make it public to you.

**Mr Lightowlers:** I would also comment in relation to information sharing about the perception of agencies regarding barriers to being able to communicate across departments - even between public officers - as a continuing problem. I think that was acknowledged in the Gordon report. With respect to Judge Reynolds, I would still dispute that the existing statutory arrangements are adequate. There is a need to overcome the perception of officers in individual departments that their legislation and their confidentiality obligations mean that they cannot share information between government agencies - that is, between Justice, between Education, between Health.

**CHAIR:** I am interested in your wording there. You said that there was a need to change the perception.

**Mr Lightowlers:** Yes. Sometimes when an officer is taken back to the legislation, you can walk the officer through the legislation and find what he or she believes to be the case.

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**CHAIR:** That is what Judge Reynolds is saying.

**Mr Lightowlers:** Clause 9 of the bill makes it quite clear, as follows -

. . . despite any law of the State relating to secrecy or confidentiality.

We have been trying for years to get people to collaborate under the existing statutory framework.

**CHAIR:** I understand what you are saying.

What is your current statistical estimate of dysfunctional families in Western Australia who do not respond to family support? How many responsible parenting orders would you anticipate issuing in your first full year of operation?

**Mr Thorn:** My educated guess was that in a fully operating service, we might anticipate about 50 applications a year. Obviously, it is up to the court in the end to decide whether or not such orders are made. That was my estimate based on the UK experience - that is, just doing a straight population count. It is very few. In the first eight months of operation, my people reported to me that there might have been up to five - certainly it was less than five - parents who may have been subject to an application based on what we have seen in trying to interact with those families. We are actually talking about very few parents ultimately. I should say that the UK experience, which is very important in this area, indicates that parents who were subject to the overall program may have been reluctant to be involved, but, ultimately, through the agreement process, they came to find that the service provided was beneficial. While we are talking ultimately about very few orders being issued, lots of parents might find the initial idea of being involved with a parent support service as being something to object to or resist.

[11.20 am]

When they were brought into it and persuaded about the benefits of it they voluntarily engaged in it, and ultimately indicated that this was of benefit to them. I think I said in the last hearing that these parents often find that they are part of a service that is directed towards their children. This service is not directed towards their children. The initial indications have been that the parent support service is there to help them. Their children are one of the indicators of the problem, but the parent support is there for the parents. In a lot of other situations the parents are key stakeholders in the behaviour of their kids. For instance, a juvenile justice team has been dealing with their kid and they are involved in those proceedings. This is quite different from that; this is about how we can help them function better as parents. It is an important distinction from what you see with most of the community development, welfare and juvenile justice services that are delivered by government agencies and their representatives, often in non-government organisations.

**Hon SALLY TALBOT:** What is the basis for your assurance that you can extrapolate from an existing program that has an element of choice for individual parents to participate? In your last response you used terms like “offered” and “persuaded”. What is the basis for your assurance that you can extrapolate from that into the proposed system, which talks about enforceable orders; that is, an injunction is made by a court that parents take part?

**Ms MacWilliam:** This is why we have said from the word go that this needs a front-end response, which is parent support. It is very much about voluntary engagement. However, it has a restricted referral base at this point from the Department of Education and Training, the Department for Community Development and the Department of Justice, as well as from the Department of Housing and Works and the police department via DCD. In the first instance we seek to engage with families, and in particular parents, on a voluntary basis. We will make repeated efforts to do that. However, if there is a continued refusal to take up the assistance that is being offered and the child’s behaviour is continuing, it is up to the referring agency to determine whether it needs to act; that is, whether it needs to find another intervention or to escalate it to the point that it will make an application to the court for an order. The legislation is being applied by the Department of Education and Training, the Department for Community Development and the Department of

Justice. Parent support is, I guess, the mechanism to provide the assistance in many instances. However, it is ultimately the line agency - the agency with statutory responsibility for a range of matters concerning children's behaviour, whether it be offending or children at risk - that will determine to apply for an order. That is the split. Is that satisfactory?

**Hon SALLY TALBOT:** I understand what you are saying. However, I am not sure that it addresses the crux of my point in relation to the Chair's previous question about the level of people that you predict will come into the service and how effective the service will prove to be with them. I am just wondering what is the basis for your assurance that the same criteria will be applicable when an order is made by a court, given that the current emphasis is on persuasion and a sense that they can choose whether or not to engage.

**Mr Thorn:** Again, it is based on the UK experience. When we first talked about this policy and proposed program, Lex McCulloch from the Department for Community Development said to me that some parents just need a bit of a push to get them to engage more and to take more responsibility for their children. I think you would be foolish to think that everyone will comply. There inevitably will be some who will resist. For argument's sake, if the court were to issue 50 orders per annum, the vast majority of the parents who were subject to those orders would comply with the sort of service that is being proposed by parent support. Based on the UK experience, about 15 per cent of parents -

**Hon GIZ WATSON:** Sixteen per cent.

**Mr Thorn:** There was a compliance issue with 16 per cent of parents, or eight out of 50. As I said before, this will not happen in isolation. It is likely that a number of other things will be going on at the same time. A child may be subject to the young offenders legislation, education act matters or child protection issues. If a parenting issue were severe and warranted going to the Children's Court to seek an order, it is likely that there would be significant other problems within that family that might mean that, say, the child protection powers under the Community Services Act would be looked at very closely around the care of that person. While we can look at this issue in an abstract way and in isolation, we need to be aware that it is likely that other agencies and other pieces of legislation will have a bearing on individual circumstances. I cannot entirely rule out that some of those parents will not be persuaded under this sort of program, but it may not become an issue if, for instance, the Department for Community Development resorts to its powers under the Community Services Act on a child protection issue. In the end, we are really on about the child. It is not about the wellbeing of the parents as such; it is really about trying to do everything possible for the care and future of that young person.

**Ms MacWilliam:** To add to that, the second reading speech referred to a number of statistics that indicated the number of school suspensions, the number of calls to the Department for Community Development duty office from parents who were having difficulties with their children, the number of juvenile offenders who appeared before juvenile justice teams and have been cautioned and so on. I am not able to quote those figures with particular accuracy right now, but they provide us with an indication of the potential referral base. That is taking it at a point where the child's behaviour is clearly evident and on the table. There are opportunities for us to obtain earlier referrals to parent support. For instance, a teacher might observe certain behaviours and see a trajectory opening up for a child. By offering the service and assistance to parents at a voluntary level, we could circumvent that and make sure that the child goes to school, instead of hopping down a track that would end with the child leaving school halfway through grade 1 or 2 and not returning to school at any point in the near future, until perhaps the child appears in the juvenile court at the age of 10 or a juvenile justice officer instigates the child's return to school.

[11.30 am]

**Ms Attenborough:** Also, the findings from the UK evaluation of positive parenting programs in that jurisdiction were that the level of benefit reported by parents was the same irrespective of



whether they were there under an order, the difference being, of course, if they were not under an order they would not have been there and would not have been able to report that benefit. That was a very strong factor in our consideration. We have also been mindful of the work undertaken across a number of jurisdictions in relation to the role of the court as a problem solver and in taking an active role in providing supervision in circumstances in which people have been reluctant to engage in behavioural change, particularly in relation to drug courts and family violence courts. The court can actively exercise a role in moving people towards an acceptance of the need for change. As we said at the last session, we see this as sitting within a similar theoretical framework, and certainly a number of papers are included in the bibliography that was provided, which we have drawn upon in our thinking on that.

**Hon GIZ WATSON:** It seems to me that the comparison with family violence and drug-related matters is dubious. They are criminal matters. We are talking about parenting here; we are not talking about criminal matters.

**Ms Attenborough:** I understand. However, both those courts accept that the nub of the matter is a behavioural issue, that it is about attitudinal change and behavioural change.

**Hon GIZ WATSON:** The question is whether it is appropriate to use courts for social behavioural issues rather than criminal issues.

**Ms Attenborough:** One could argue that the court does that, particularly the Children's Court. Again, I would also point to increasing work in the US - a couple of papers are mentioned in the bibliography - where the court is actively taking a role in directing parents to engage with their children in improving their parenting skills.

**Hon GIZ WATSON:** I cannot think of many examples of the US legal system that I would like to emulate in WA, but we will not go there. It seems to me it is difficult to see how the circumstances of the UK model, which you are looking at drawing on quite strongly as evidence that this will work, would apply. What consideration has been given to the fact that the circumstances of Aboriginal people in Western Australia, as a result of colonisation, are totally different from those of virtually anybody who was part of that UK model? Their relationship with authority, whether it be the Department of Justice, Department of Education and Training or the Department for Community Development, is profoundly different. I would suggest the cultural and historical barriers for people with that background, and how they would respond to a coercive approach, are quite different from those in the UK model. I challenge whether that is surmountable. May I ask a specific question? I think you said there were five dysfunctional families identified. Is that in the whole of WA?

**Mr Thorn:** That is only in the south east corridor.

**Hon GIZ WATSON:** Is there no estimate at a statewide level?

**Mr Thorn:** We would just be extrapolating those sorts of experiences across the state to come up with a number. It would not be based upon anything other than that sort of statistical modelling. We have not had an opportunity to examine case files, for instance. We have attempted to get advice from DCD and the Department of Education and Training about what sorts of numbers they might expect, but by and large it has not been that prospective, I must say.

May I come back to your important issue about Aboriginal people? I think what you say is absolutely right; that the experience of Aboriginal families will be completely different. That is why we are engaged in very intensive policy and program development work to come up with solutions and models for dealing with that problem. I think the point is important, however, that Aboriginal families have as much responsibility for their children as European families. I do not think we should run away from that fact. The fact that it is a difficult and tough nut to crack does not mean that we should not have a go at it. I think that the threshold issue is really about the parents' responsibility for their children and the overwhelming evidence that supports the fact that

parenting of young children is the most critical factor in the behaviour of those people as they grow into adults. That is the issue. That is what is at the centre of all this. I think we have had the benefit in recent days of more international research, this time about the origins of human aggression, which is pointing to the first two or three years of a child's life and the behaviours that must be taught to a child. Richard Tremblay's work suggested that by the time these kids become troublemakers, as it were, at 15 to 20 years of age, it is too late. Those behaviours that should have been trained out of a person cannot be. That is the evidence.

**Hon GIZ WATSON:** May I ask again the same sort of question? Recognising that Aboriginal families will be a subset where this is most acute, there is unlikely to be success without the involvement and participation of Aboriginal organisations, for example, and there must be a community-owned solution. It somewhat concerns me when you are talking about behaviour that needs to be drummed into a child of up to three years of age when most of the effect is poverty, bad health and a whole range of other factors; it is not about behavioural direction.

**CHAIR:** The fate of Aboriginal communities is actually unique - not just in poverty and in health.

**Hon GIZ WATSON:** It is a whole range of factors.

**Ms MacWilliam:** It is fair to say that in our early consultations an Aboriginal woman said to me that this will appeal to a lot of Aboriginal people where there are a small subset of Aboriginal people who make Aboriginal people look bad to the general public; in fact, the behaviour of a certain number of subset families reflects very poorly on the general Aboriginal community. That is a major concern to Aboriginal people.

**Hon GIZ WATSON:** Looking good?

**CHAIR:** Just on that point, I think that what Giz is saying is that is one of the very strong themes that come through in the Aboriginal Legal Service submission in response to your discussion paper. One could infer that a lot of the points that Giz is making is as a result of the points the ALS is making in its submission. When you were answering questions on this subject earlier, you were talking about the level of compulsion when it comes into effect and how there would be a lot of other things happening at the same time.

[11.40 am]

I draw your attention to the WACOSS submission to this committee, in which it points out that in its view the parents who would be the subject of these responsible parenting orders would most likely have already sought support from other services, and that its research shows that one in three people who seek support in Western Australia are turned away because there is not sufficient resourcing and there are not enough services to assist these people. Are you confident that, when you talk about all these other things that will be going on, there will be an adequate level of servicing to assist you in what you are doing?

**Mr Thorn:** Unquestionably with regard to parent support at the moment we are operating at nowhere near the sort of case load that I would expect for an efficient service, so just in terms of that very specific challenge of meeting the needs of parents who are referred to the program I do not anticipate any problems at all. With regard to the other claims by WACOSS, without the benefit of knowing the context of its submission I would very much doubt that it has got its head around exactly what we are saying here. I think it is plainly obvious in the community that there are many parents who do not accept their full responsibilities. These issues do not all come down to colonialisation. These issues arise for all sorts of reasons. It gets back to what I said a moment ago about the really critical issue being the parents' role in the upbringing of their child. This program and this legislation are aimed at trying to address that issue. It will not solve all the problems and it does not seek to solve all the problems. However, it is another step or measure to try to get at what has become clear is a critical issue in the behaviours of some young people.

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In terms of the order component of the legislation, the bill does refer to whether, in the view of the people who are making the application, parenting is identified as the issue that could change the circumstances around the antisocial, offending and school attending behaviour of the young person. Therefore, we will not be seeking an order in circumstances in which clearly environmental or other circumstances mean that all the efforts of parent support will not result in any change. It would be pointless seeking an order in such circumstances. That is why a lot of effort is going into trying to work out how to deal with the situation in remote communities in which almost the entire population is Aboriginal and access to the sorts of services that are available in the metropolitan area or large regional centres is just not available. We would need different approaches in those circumstances. It would also be fair to say that there are issues and matters in those communities that are much more important than parent support recommending to a director general that a parenting order should be sought against a parent in such a remote community. Of course, there is a whole arm of government, both commonwealth, state and local, that is working towards trying to deal with those issues. I have some views about that, but I do not think this is necessarily the appropriate time to raise those concerns.

**Ms Attenborough:** I also draw your attention to clause 18(2) of the bill, which sets out the matters that the court must consider when making an order. A pretty high threshold is set there in terms of the matters that must be considered. Certainly the social and environmental factors and circumstances of a family are directly pertinent. It is unlikely that an application for an order would be brought forward in circumstances in which we were setting somebody up to fail. As I said last time, the agency would not be seeking an order in circumstances in which we knew that the surrounding situation of the family would make it impossible for it to comply.

**CHAIR:** In relation to 31(2) of the bill, can you explain to the committee the rationale for allowing hearsay evidence in a court? Also, given that hearsay evidence would be permitted, how would that affect an appeal against an order that might be based on hearsay evidence in the court of appeal, which I think would be bound by the rules of evidence? How is that relationship in respect of hearsay going to work?

**Mr Lightowlers:** The theory behind clause 31 is to ensure that there is an informal procedure. The informal procedures that are undertaken in the Children's Court are consistent with those in a number of other tribunals, such as the State Administrative Tribunal, that operate outside the strict rules of evidence. In terms of the impact on an appeal, I would like to give that some further consideration, but my first reaction would be that a court that was looking at an appeal would be able to look at the whole procedure afresh, so it would be, I think, a de novo hearing. That would mean that a superior court that would be looking at the issue would start afresh and go through the procedure again. It may well - I would have to check this - take the evidence itself. There is a similar process in criminal injuries proceedings in which the District Court reviews decisions and undertakes a de novo hearing and takes the evidence again and makes a fresh decision in place of the original decision.

**Hon GIZ WATSON:** Would it be possible for you to confirm that?

**Mr Lightowlers:** Yes.

**Ms Attenborough:** Can I also say that section 146 of the Children and Community Services Act outlines very similar provisions in relation to the court not being bound by the rules of evidence and allowing hearsay evidence, so it is not a unique provision.

**Hon GIZ WATSON:** In relation to what matters?

**Ms Attenborough:** Child protection proceedings.

**Hon SALLY TALBOT:** That is not subject to appeal in the same way, is it?

**Ms Attenborough:** I do not know. I will have to get back to you on that.

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**Hon PETER COLLIER:** I am not entirely sure about the rationale behind the provision with regard to hearsay evidence. Would you mind giving me a precis of that?

[11.50 am]

**Mr Lightowlers:** It is a procedural process to ensure that informality is the mainstay of the proceeding. It is done to ensure that technical legal processes do not get in the way of the court hearing. The evidence heard is that which the court thinks is most relevant. An example of strict rules of evidence is that it must be based on the best-evidence rule 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 it is to maintain informality and 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.

**Hon PETER COLLIER:** I appreciate that. I agree with Hon Giz Watson that it is imperative to get clarification on the right of appeal.

**Hon GIZ WATSON:** I have a couple of extra questions on court proceedings. Is it correct to say that interim responsible parenting orders can be made ex parte; that is, in the absence of the parent?

**Ms MacWilliam:** Yes, it is.

**Hon GIZ WATSON:** Is there an issue of natural justice?

**Ms MacWilliam:** The court is obliged to set a hearing date that is as soon as practicable thereafter. In that case the order would be a very simple order. It would ensure, for example, that a child attends school or does not associate with certain people at school and so on. What happened in the interim would form part of the hearing at which the parent was in attendance. It is based on the concept of the restraining order legislation whereby an order can be made in the absence of the defendant for a time. It is similar to a notice being served.

**Hon GIZ WATSON:** Is it a deliberate choice to allow those orders to be made without the parent being present?

**Mr Thorn:** The application can be made. It is up to the court to make the decision with regard to whether the order will be issued. Certainly provision has been sought to allow that to be done.

**Ms MacWilliam:** The regulations will take care of how people are notified that they are required to appear in court to respond to an application for a responsible parenting order. That would be by notice to attend, for example. If a parent refuses to attend at that point, the court could then consider whether to impose an interim order.

**Hon GIZ WATSON:** Another matter that has been raised in submissions is the issue of legal representation. Is it correct that these proceedings can be done without the parent having any legal representation?

**Mr Thorn:** That is correct.

**Hon GIZ WATSON:** Is that most likely to be the case?

**Ms MacWilliam:** Currently the Children's Court can determine that the proceedings for child protection orders can continue without the parents necessarily being represented. It is not an ideal situation.

**Mr Thorn:** That is not an unusual circumstance. That is a policy issue that might be best directed to the minister.

**Hon GIZ WATSON:** It is part of the bill.

**Mr Thorn:** For sure. I am just saying that they are the circumstances. They are not unusual circumstances regarding all sorts of legislation dealing with legal representation. A person can seek legal aid, for instance.

**Hon GIZ WATSON:** Their chances of getting it are nil and zero.

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**Mr Thorn:** There is an issue about what the government wants to do about providing legal representation, which I do not feel I can answer.

**Hon GIZ WATSON:** It seems to me that it is a matter of natural justice because in many cases dysfunctional parents are unlikely to have a good grasp on legal matters or even the ability to speak the language, but that is another question.

The bill contains a lot of statements about being “in the best interests of the child”. How can it be in the best interests of the child to punish parents for not being responsible parents? Will not such punishment aggravate already dysfunctional parent-child relationships?

**Mr Thorn:** This legislation 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. We have already agreed with that. I do not think that that type of circumstance should cause us to not tackle the issue of parenting. 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 that 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. I think there are sufficient provisions within the bill to protect the child. As Wendy said, quite a high threshold is set for the issuance of an order. I do not believe that is such a significant issue. There are circumstances to consider, but 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.

**Ms Attenborough:** Although I respect the comments Hon Giz Watson made earlier about the different circumstances between the UK and Australia, the evaluation of that program found that there were statistically significant improvements in the relationships between parents and children. It found also there was an increased incidence of supervision and that generally family’s lives were happier as a consequence of the parenting intervention. Evidence from courts in the US - particularly the Miami-Dade court - shows that when active intervention has been undertaken to assist parents to provide a more nurturing environment and to provide greater supervision for parents to effectively do their job as parents, there has been an improvement in the relationships between the parents and their children and in the general circumstances of the families.

**Ms MacWilliam:** Another point is that when a court makes an order, it is not a punishment of the parent in any way. An order requires parents to participate in the services and assistance that are offered to them. The clinical framework that is being used is very much a strengths-based approach. It is a persistent attempt to engage with parents, even when they are subject to an order, to assist them to find better ways to create better outcomes for their families and their children.

[12 noon]

Going back to what was mentioned a few questions ago, an indigenous reference group is assisting us in deciding how to bring together the program for indigenous people. We had early input from Dr Tracy Westerman about the suitability of the program that we were previously putting together. That has had a marked effect on how we are now proceeding. We have taken on board the inappropriateness of applying a European, White-Anglo-Saxon-Protestant or WASP-type programs to an indigenous client base.

**Hon GIZ WATSON:** Who is on that committee? In what capacity do they advise? Is it ongoing?

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**Ms MacWilliam:** The committee comprises people from Anglicare, a non-government agency, indigenous affairs and the Department for Community Development. That group is expected to meet for the bulk of this year and beyond if necessary.

**Hon GIZ WATSON:** So is there one Aboriginal person involved?

**Ms MacWilliam:** They are all Aboriginal people.

**Hon GIZ WATSON:** I would be interested to know who they are.

**Mr Thorn:** We will provide that information to you.

**Hon SALLY TALBOT:** On a point of clarification, I refer you back to the concept of the best interests of the child. How do you measure that improvement?

**Ms MacWilliam:** It is about demonstrated behaviour, self-reporting of changes in behaviour and observable changes in the behaviour of the child.

**Ms Attenborough:** The clinical framework that is being established with the delivery of the service is robust and those changes are demonstrable and recordable.

**Hon SALLY TALBOT:** Does self-reporting include self-reporting by the child?

**Ms MacWilliam:** We are still in discussion about how we record a reporting by the child, how we record a child's story and how we record the child's view about what is going on in his or her family. We have purposely chosen to ensure that we use the strength and difficulties questionnaire, an internationally applied questionnaire that has been used in the United Kingdom and by the Telethon Institute of Child Health Research and has been adjusted for use with indigenous populations and communities within Western Australia. That is a repeated questionnaire - it is used pre and post-intervention - that indicates what changes there have been. We probably need to provide you with some information about the clinical framework rather than try to cover it in an answer now. In addition, engagement with the family shows where the family is, where the family sees itself at a certain point in time and where it would like to be. It then tracks the movement towards the goal the family has set itself.

**Hon SALLY TALBOT:** It would be useful to have some detail about the clinical framework. You still have not resolved the question of how you might include self-reporting by the child as part of that framework.

**Mr Thorn:** Last time we met we mentioned that the Australian Institute of Criminology has been retained to evaluate the program. It is the key professional body working up the whole framework -

**Hon SALLY TALBOT:** Is that to evaluate the existing program that you are running in the south metro area?

**Mr Thorn:** It is parent support - yes. Ultimately it will evaluate the legislation if it passes through Parliament. Clearly a whole range of issues and factors can be considered in terms of the success of any intervention. If we are dealing with a child who has a school attendance problem, the obvious way to look at the success of this program is improvements in school attendance and school performance. They are pretty significant indicators that we should focus on. What we are learning from the AIC, and what my professionals tell me, is that there is also a range of in-home and other social indicators around a young person's development and behaviours that can be measured, and evidence can be produced to show whether or not they are positive benefits as a result of these interventions. It is an area that we have focused on quite heavily.

**Hon SALLY TALBOT:** I am confused about some of the numbers you are using. When you earlier referred to 300 referrals a year, I understood that to mean per team. Where does the 50 come in? Do I have that wrong?

**Mr Thorn:** The 300 is the indicative case load per team. It is not 300 at any time, but 300 during the course of the year that a team would service.

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**Hon SALLY TALBOT:** But they are not all parenting orders.

**Mr Thorn:** No.

**Hon SALLY TALBOT:** Some of those would be voluntary -

**Mr Thorn:** Overwhelmingly they would be -

**Hon SALLY TALBOT:** What does the 50 refer to?

**Mr Thorn:** The 50 was my calculation of how many applications for orders might be made across the entire state.

**Hon SALLY TALBOT:** Would they be non-voluntary referrals?

**Ms Attenborough:** There would have been a referral -

**Hon SALLY TALBOT:** So will they come out of the 300?

**CHAIR:** No. It is 300 per team, but 50 across the state.

**Mr Thorn:** We might be looking at 1 500 cases a year across the state. Just to make it clear how that process operates, the circumstances are identified either through community development, corrective services or education, for instance, and that case is referred to parent support, which then assesses it to determine whether it is a suitable case to investigate and take on. The circumstances around engaging with the family then commence. That failure to secure an appropriate level of engagement leads to a situation in which consideration might be given to seeking an order in order to precipitate that engagement.

**Hon GIZ WATSON:** I seek clarification about something that was said about a parenting order not being a type of punishment. Am I correct; are you suggesting that it is not a punishment?

**Ms MacWilliam:** Yes. It is a court order requirement that people access the services that have been offered to them and that continue to be offered to them to impact on their child's behaviour that is problematic to the child, the family and the community and likely to lead to untenable outcomes for the child's long-term development. It is post-order; if a person repeatedly refuses to engage with the court's requirement, there is a penalty.

**Hon GIZ WATSON:** Do you concede that a person against whom such an order is made might perceive it as punishment, especially if he or she has had previous involvement with the court? That is what happens in courts.

**Ms MacWilliam:** We know very clearly the client group that may well end up in that situation. How we deal with them is to work with them to make good things come out of the process, rather than it spiralling into another negative experience.

**Hon GIZ WATSON:** Do you accept that they might perceive it to be punishment?

**Ms MacWilliam:** I cannot say that I could impact on anybody's impression.

**Hon GIZ WATSON:** I suggest that they would perceive it as a penalty.

**Ms MacWilliam:** Some people may experience it as penalty. However, in terms of a definition, an order is not of itself a penalty -

**Hon GIZ WATSON:** Unless it is breached.

**Ms MacWilliam:** No, then there is a penalty.

[12.10 pm]

**Ms Attenborough:** Again I refer to the evaluation of positive parenting or the positive parenting report in the UK. Even those parents who were initially resistant and did see it as a punishment recognised very quickly that there was a benefit, and they had a high level of attendance, involvement and engagement and reported beneficial outcomes.

**Ms MacWilliam:** Would it be useful to the committee for me to provide it with a flow chart that gives some sort of tracking of how a person might end up before the court, where an application for it was made, what events would be followed if the order was breached, what the court's dispositions might be, and what the results of those would be in the longer term as they flow through?

**CHAIR:** Yes. I have a short quote I want you to comment on. I am mindful we have been over this field quite a bit. I am not necessarily asking you to rehash the answers that you have given. In looking at it, I cannot think of anything you would say, but I will give you an opportunity to respond to it. It is from the New South Wales Law Society's Criminal Law and the Children's Legal Issues Committees in respect of the five-year review of the New South Wales act. My notes indicate that it said -

In many cases, children who offend come from homes where there is serious family dysfunction. Parents themselves may have problems with drugs and alcohol, violence or psychiatric problems or a history of abuse. These parents do not have the personal skills or resources to make their children behave more appropriately.

Is there anything you want to add to what has already been said about that?

**Ms MacWilliam:** I think Ms Attenborough has already addressed the issue that the thresholds for making an order are really quite high. Clause 18(2) makes specific reference to mental health issues, the environment and the parents' capacity etc.

**Mr Thorn:** That said, that does not mean that you do not try - and the circumstances are assessed - to see whether some improvements can be secured. The parents support program has been built up in partnership with our drug and alcohol services as well as with the other welfare services. If part of the program that needs to be put together to help those parents improve their parenting capacity means being referred to drug and alcohol programs, that is what will happen. Implicit in those sorts of findings is that there is nothing that can be done, if I am hearing your quotation correctly. That is not the position that I take and I am not sure that that is the position the community wants us to take.

**Ms Attenborough:** That was a quote in relation to a review of legislation that is very different to this legislation.

**CHAIR:** I think your view of the New South Wales legislation is understood.

**Mr Thorn:** And they have now rectified that.

**Ms Attenborough:** And they are now moving to introduce something quite similar to this.

**CHAIR:** I understand all that and we are not comparing apples with apples.

**Ms Attenborough:** The evidence is very strong in pointing to the capacity of people to learn to parent. Parenting is a learnt skill. It is not something where, when we wake up with a baby, we know how to parent. Nurturing skills can be developed. The capacity to order routine and so forth can be learnt. Certainly the paper that I have referred to a few times in relation to the Miami court describes case studies of extraordinarily distressed families and teenage mothers in circumstances where it is difficult to imagine how they could ever parent yet have learnt to parent and have improved their skills and their relationship with their very young children. We cannot throw our hands up on this matter.

**CHAIR** Under clause 24 an appeal can be made to the Court of Appeal against a responsible parenting order. Given that the affected families we are talking about may be poor, marginalised and unable to afford the cost of an appeal, is not this clause, certainly for many people, illusory?

**Mr Lightowlers:** I will answer that in a general sense. Apart from not-for-profit bodies that 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.

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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. It is possible; it is not completely illusory.

**CHAIR:** The point of my question is that if you do not have the means, you are not likely to have the inclination to ask whether you can get it for free.

**Mr Lightowers:** If you feel it is punishment and want to rail against the machine, then you might well find a way. There are litigants -

**CHAIR:** No doubt there are as there are people who go away -

**Mr Lightowers:** - and roll over. It would be a misrepresentation to describe it as illusory. That is taking it too far.

**Hon GIZ WATSON:** I have a question about the interaction between the proposed responsible parenting orders and restraining orders that may already be in place in relation to a parent and a child. Will the parenting orders override restraining orders or vice versa? Has this been considered?

**Ms Attenborough:** Are you talking about circumstances where -

**Hon GIZ WATSON:** I am talking about a circumstance which is perhaps possible where a restraining order is in place between the parent and the child. Has this been considered in drafting this bill? Is there anything that legally clarifies which order has priority? If you cannot answer it now, you can get back to us.

**Ms MacWilliam:** That would be better.

**Ms Attenborough:** Although we need to be reminded that the best interests of the child prevails. An order would not be sought in circumstances where the child would be exposed to danger.

**Hon GIZ WATSON:** I suggest that that might need to be explicit rather than assumed.

**Mr Lightowers:** The contents of the order set out in the bill and the contents of the order that are available to the court do not lend themselves to being inconsistent with a restraining order - an order to attend parenting guidance counselling to take reasonable steps to ensure the child attends school and to avoid contact with specified persons.

**Hon GIZ WATSON:** I am quoting from a question from the Director of Legal Aid Western Australia. Therefore, perhaps there is a necessity to put it beyond doubt if there is any doubt.

**CHAIR:** It is an interesting question and my immediate thought is that if the Family Court is the superior court, how would the Children's Court get around a restraining order?

[12.20 pm]

**Hon GIZ WATSON:** It probably would not want to. It would probably choose not to impose it.

**CHAIR:** No, I mean if the circumstances for that restraining order were no longer threatening to the child or the family circumstances, you might come up against legal obstacles to effectively look after the interests of the child.

**Mr Thorn:** I think there are lots of permutations. We will have a look at getting some written advice back to you.

**Ms Attenborough:** I would also say yes, the issue was considered in terms of ensuring the safety of the child in taking this forward.

**Ms MacWilliam:** Just as an order cannot be made if there are child protection proceedings. There does not have to be a child protection order; simply proceedings.

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**Hon GIZ WATSON:** My final question is about the reference in the bill to residential parenting and counselling courses. According to the submission of the Western Australia Council of Social Service, at the time of writing there were no such courses in Western Australia.

**Mr Thorn:** I am sorry, could you just repeat that?

**Hon GIZ WATSON:** Yes. In relation to residential parenting and counselling courses, WACOSS states in its submission - which unfortunately I am afraid you have not seen either yet - that at the time of writing there were no such courses in Western Australia.

**Ms Attenborough:** I think it is fair to say that there are certainly residential drug rehabilitation courses, which would be just as pertinent if that was an issue that was directly affecting a parent's capacity to parent. There are residential programs in relation to parenting capacity as well.

**Hon GIZ WATSON:** Perhaps you could clarify in writing the residential parenting and counselling courses that exist.

**CHAIR:** I will ask David to make sure that the witnesses have a copy of the WACOSS submission to take with them. They might like to respond to that as well. I think that would be useful for them.

**Ms Attenborough:** The relevant clause actually states -

A parent may be required under subsection (2)(a) to attend residential counselling or a residential course if the Court is satisfied that residential counselling or a residential course is likely to be more effective . . .

That does not specifically say -

**Hon GIZ WATSON:** "Parenting".

**Ms Attenborough:** Yes.

**Hon GIZ WATSON:** Although it would perhaps be assumed, since this is all about parental responsibility.

**Ms MacWilliam:** It is creating a stability factor.

**Hon GIZ WATSON:** Perhaps you could indicate which courses the bill is referring to.

**Mr Thorn:** Yes, I think we can provide some examples; the sort of thing offered by Ngala, for instance, and there is drug rehabilitation.

**CHAIR:** That is the list of questions. Thank you very much for your attendance today and previously. We appreciate the detail that you have provided in your evidence and its fulsome nature. As I said earlier, you will be receiving a transcript. You are now experts at this, so you will be able to go back through your transcript and provide us with corrections. Until such time as that is confirmed, obviously, your evidence remains confidential.

**Mr Lightowlers:** We have some things to come back on. Have you got time lines on those and when you are reporting?

**CHAIR:** Just as soon as you are able to, really. We are dealing with this matter in two weeks when the committee is meeting again. If you were able to provide the information that was sought from you today within that time frame, that would be terrific. If you cannot, we will await it until as soon as you can get it back to us.

**Mr Thorn:** With regard to the submissions that you have received, we have now been provided with copies of the Children's Court and WACOSS submissions. I think you referred to a couple of others today: Legal Aid and the Aboriginal Legal Service.

**CHAIR:** David has anticipated that. There you go. That is service for you.

**Mr Thorn:** Thank you.

**CHAIR:** Thank you very much for your attendance today.

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**Hearing concluded at 12.24 pm**

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