

# **STANDING COMMITTEE ON LEGISLATION**

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

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

### **SESSION ONE**

#### **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 10.03 am****JACKSON, JUDGE HENRY HALL (HAL)****Chairman, Ministerial Advisory Council on Child Protection,  
District Court of WA, Level 14, Central Law Courts, examined:**

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

**Judge Jackson:** Yes.

**CHAIR:** Thank you. Today's discussions are public. They are being recorded and a copy of the transcript will be provided to you. Please note that until such time as the transcript of your public evidence is finalised, the transcript should not be made public. I advise you that premature publication of the transcript or inaccurate disclosure of public evidence may constitute a 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. Would you like to make an opening statement to the committee?

**Judge Jackson:** I did not come along with an opening statement because the ministerial council I chair sent a written submission in some time ago. I was invited by the committee to appear, so I am not exactly certain what you want to address. What we had to say is in our submission. I should add for completeness that, because this proposed legislation has been around for a while, until last September I was also chair of the Youth Legal Service. During that time that service made a submission as well, I think in 2004, so I am aware of what the YLS put in its submission.

**CHAIR:** The committee is interested to know a little bit about the Ministerial Advisory Council on Child Protection and its relationship with the Department for Community Development.

**Judge Jackson:** I cannot speak for the Department for Community Development. The advisory council was appointed by the minister. We receive our budget through the budget of the department, as well as some administrative support. The advisory council is made up of representatives of a variety of agencies: police, education, health, DCD and so on as well as some community people. I am supposed to be the independent chairman. It comprises also some NGO people from the charitable sector. I am not here to speak for the Department for Community Development. However, I notice a provision in the legislation - forgive me if I cannot remember the clause numbers - that parenting orders are not to be made in respect of children who are under protection orders under the new DCD legislation, which came into force on 1 March, so it is pretty new. Other people have thought about that. However, as I read it, the legislation the committee is concerned with will not operate in respect of children who are under at least formal orders under the Children and Community Services Act. The parents of children who are under that act will not be brought under this legislation. As I see it, the two pieces of legislation might be considered in separate spheres. How the two will interact might be an issue about which comment could be sought. I have not given it much thought. The new legislation under which community development is to operate has been in force for only a week. It is different from the old legislation. I do not know whether others have addressed that issue. If I remember a conversation Judge Reynolds had with me, he might have. As I say, I understand that the Children and Community Services Act will operate in respect of children subject to those proceedings and this Parental

Support and Responsibility Bill will not be able to be applied to them. I may be wrong but that is how I read it.

**CHAIR:** You referred to the discussion paper that was submitted in January 2004. Given the committee is inquiring into the bill, do you have any further comments on any concerns or strengths that you have identified between the time that has elapsed since you prepared the discussion paper and the introduction of the bill as it was presented in Parliament?

**Judge Jackson:** I do not want to seem difficult. I have not made a detailed point-by-point comparison between the bill now before the Parliament and what was proposed in the discussion paper. Obviously the bill contains administrative material that probably was not discussed much in the paper. Our ministerial advisory council was more concerned with the principles underlying the whole concept rather than with providing detailed comments on the bill. When we did it, we did not have a bill to work from, although I might be wrong again. Our concern is with the underlying philosophy and the application of the proposals in practice. We were briefed by Mr Thorn from the Office of Crime Prevention and I think one or two of his offsiders. Some correspondence went to and fro, so we were briefed on it. However, at that stage it had not been rolled out on a pilot basis, if you like, or on a voluntary basis into the south-east corridor, which I understand it now has been. Frankly, we have not had a discussion or been briefed about how it is working in practice. To that extent our response might be outdated; I do not know.

**CHAIR:** In your submission you appear to question the effectiveness of parenting orders to reduce truancing, antisocial behaviour and juvenile crime. You state that these frequently result from parental neglect and physical and verbal abuse by parents. Can you identify anything in the concept of the parenting orders that have any merit or role?

**Judge Jackson:** When the report on the United Kingdom model, which seems to have inspired this to a large extent, came out, most of the people who had been involved in it seemed to be single mothers who presumably were under stress in various ways trying to bring up children on their own. A large number of them seemed to be happy to get whatever support they could. We are not opposed as a council to that sort of service provision. In fact, we strongly support it as long as it is not blaming and alienating, and it is a provision of services to willing respondents who use it. I suppose everybody in the community would be in favour of it. However, it is the concept of how taking action in court, with a penalty of a fine, against parents who are thought by some authority to have not tried to make the contract work - that concept itself is a bit difficult in some situations - and who have fallen down on their side of it at the voluntary end will improve their parenting skills.

It may result in counterproductive behaviour altogether. One of the concerns for people who will be looking after the welfare of children is that in a violent household - many of these would be - what will be the outcome for the child should dad be fined in court because the kid in effect was felt to have let him down? That might be the way he thought about it. It might mean a thrashing. We have concerns about those sorts of repercussions. If we are thinking about single mothers in England, who seem to be the most responsive, we have concerns about how a single mother under stress, trying to bring up kids, is helped by being fined a few hundred dollars. How does that help her parenting? It might be better to give them a few hundred dollars to see what productive use they can make of it. No-one is against the idea that kids should be taken to school and looked after and should not misbehave. Translating the concept of punishment of bad parents into some sort of productive result causes me some angst.

[10.15 am]

**CHAIR:** You were talking about the department's reliance on the UK pilots and pointing to the purported success of those pilots. I think you said that the evidence is not conclusive. Do you want to add anything further to that?

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**Judge Jackson:** When the UK report came out, we were relying on the reported study from England, but we know that the New South Wales legislation, unless things have drastically changed in the last few years, has been a bit of a failure. It was a pilot in - I have forgotten the names of the towns, but I think it was Orange, Bathurst, Dubbo or somewhere and a couple of other places. The evidence seemed to be that it was not much used and the courts were reluctant to start enforcing it through court orders in the cases that were brought before them. I appreciate, and Mr Thorn stressed this to us, and it is stressed in the government's papers, that these orders are the hard end for quite a small number of people. I do not want to be heard to say that it is never going to work, but I would be interested in an independent evaluation five years after it is brought in to see what the numbers were and what the results have been.

When I first went to the Children's Court as president way back in the late 1980s, there was one boy's case that really struck me and which I have never forgotten. He was about 14 or 15 years old and his only care giver was his single mother. They lived in a small flat in one of the poorer suburbs. She was a drug addict. Eventually he ran away and either suicided or died from an overdose in Kings Cross when he was about 15. If I take that as a model case, I ask myself how fining a mum will help the situation. He was parenting her to the extent that he was able. What is needed with most of these hard end families that we are talking about is support. There is nothing in the bill that talks about counselling for drug use, alcohol use, mental health, and all these sorts of things. They are the core of these problems; that is, poverty, whether self-induced or otherwise, or violence. That is the whole pool. I am not talking about the middle class who do not give the kid a lift to high school.

**Hon PETER COLLIER:** Would you mind giving some clarification regarding the New South Wales model. You said that unless there has been a significant shift, the New South Wales model has been basically a failure.

**Judge Jackson:** That is based on the information I have.

**Hon PETER COLLIER:** From that information, can you ascertain the main problem areas of that legislation?

**Judge Jackson:** I may have here some stuff on it. I think it has been fairly well documented in the literature because it was quite a controversial subject in New South Wales, especially among the youth sector and so on. It was brought in as a pilot, I think from memory, in 1997. I am going on memory here unless I read this stuff again. However, it was brought in as a pilot in a smallish number of New South Wales centres. One or two were regional centres - I think it was Bathurst, Orange, Dubbo or those sorts of places, as I said. There may have been one or two suburban ones. After a trial period, a study was made of how it was working. I have forgotten, but I think the trial period was a couple of years or so. The result was that the numbers were very small and there was considerable resistance amongst the authorities to use it. The magistrates certainly were not happy with it. If and when the legislation goes through Parliament in whatever form, that is one reason that I would like to see a study about five years down the track to ascertain how it has worked.

One of the problems with a lot of legislation, if I can be frank, is that no-one ever really evaluates it. It is as if you pass the bill and that is the end of it; it is finished. Other people have to live with it for years and years and no-one asks, "How is it going? Do we need to fix it up?" They do not ask us anyway.

**CHAIR:** You also state in the submission that interventions to help should come from a welfare perspective, not criminal justice. In your experience, do welfare interventions work for truants and anti-social and criminal juveniles?

**Judge Jackson:** The concept is that there is something provided. It is never a matter in these sorts of fields of everything working or nothing working - it is always, I suppose, a best option. What is the best way to do it? It is not a matter of what is the perfect way to do it or what will be a total

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failure. I notice in some of the papers that I was reading, and I think it was referred to in the Office of Crime Prevention's discussion paper as well, reference was made to a couple of programs that were introduced when I was president of the Children's Court. One was the Killara initiative. That is what it was called, and I have forgotten why we called it Killara. It was not named after the Sydney suburb. We found that a very large percentage of the kids who came before the Children's Court needed various sorts of support. We also found, and this is historic and I do not want it to be translated as meaning it is the current situation, that basically the Department for Community Development works 9.00 am to 5.00 pm. Usually the kids do not get into trouble between 9.00 am and 5.00 pm. They usually get into trouble a bit later than that. We set up a unit that had a sort of night service. That was its function. If the police or whoever picked kids up or came across kids in trouble at night, they could ring the service and the service would do whatever could be done. That service is still going, so I can assume that it was a worthwhile initiative.

Another one that I was involved with was the introduction of the juvenile justice teams. Essentially, they were for offenders, but for offenders who also had welfare needs - and that is most of them. It was a way of addressing both things at the same time. It has been a longstanding debate, which I will not try to go through historically, about the relationship between justice and welfare when you are dealing with young people. Historically, up to the late 1980s in Western Australia, it was all put through the welfare department under its various names, and it seemed to me that changed with every change of government.

The decision was made in the late 1980s consistent with decisions that had been made earlier in a lot of other places to split the justice side and put that into the mainstream courts and the care and protection side was left with DCD. The Children's Court still deals with both, as it always has, but in the workings of the court a clear separation is made between the two streams. This parental responsibility is a bit of an add-on to that; it does not really match either of those two purely because truancy does not necessarily fall into the juvenile justice side or the welfare side - it straddles them. It is a bit of a hybrid. The fact of the matter is that most of the children who fall into these pools need some sort of support. Whether you call that welfare or whatever, I do not really care. To the extent that their parents are implicated in their position, they may well need support. They may not be the best people to judge whether they need it or how to use it. That is why I was talking earlier about fining people. You have to ask what fining people does. If you have a single mother and the court fines her \$1 000 and she has three kids at home - let us say she is a drug user and not looking after the kids properly - and she does not pay the fine, what do you do then? Do we put her in prison? That would be a good help for the kids, would it not? Do we make her do some community work? She will not do that either. There are limits on the usefulness of fining people in these situations. That is not to say there is never a case. If it were my kid, probably a fine would be a useful way to make me do what you want me to do, but I do not think that most of these cases are in that category.

**CHAIR:** You have addressed the other questions I had for you.

**Hon SALLY TALBOT:** You have already made the point that you have not specifically addressed a possible overlap between this bill that we are looking at today - I take it that the bill you are referring to as having started on 1 March is the Children and Community Services Act.

**Judge Jackson:** That is right. The bill that you have, unless it has been changed, I think refers to the Child Welfare Act; I think it was section 30, but now it has been replaced.

**Hon SALLY TALBOT:** Yes. You are right that Judge Reynolds has raised some significant points with us, as have others, and it has been suggested to us that some of these issues addressed by the bill under consideration today would be best dealt with by being incorporated within the act that came into operation the other day. Is that a question that you would be prepared to take on notice from us?

[10.30 am]

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**Judge Jackson:** It is certainly not a question I would like to be dogmatic about this morning. The only thing I would say is that the care and protection jurisdiction tends to be one that often extends over a period. It can include a whole raft of possible situations, sometimes, but not always, involving the moving of the child out of the home that they have been in to another one - that is, often kin care or relative care, or occasionally these days still departmental or non-government care. There is a whole raft of issues that those orders usually have to deal with. One of the differences between the new act and the old one is that it is much more flexible. The old act was very old and out of date. I do not know what DCD would think about this, but, for instance, if the only issue in the child's life is refusal to go to school, I would rather doubt that DCD would think that is appropriately placed in the care and protection jurisdiction. I do not know whether you have heard from DCD, but if you are going to follow up that sort of possibility, it is really an issue that DCD should be asked to think about because it involves consequences for it. I guess there will be a number of cases that will come under the Parental Support and Responsibility Bill and which could fall into that area. Whether they all would, I do not know.

**Hon GIZ WATSON:** I noticed that you said earlier in your comments that the principles are the problem or the issue. That would be the first point on which you take exception to this bill. Could you perhaps expand on what principles you think are being transgressed or challenged?

**Judge Jackson:** I think it is just the concept, which seems to be endemic in a lot of the way we think in Anglo-Saxon communities, that if you have a problem, you either ban something or make it compulsory, and you punish people who do not do it. That is not true. There is a whole raft of other ways to deal with it, and often these are better ways. That is really, I suppose, why I have been focusing on this question of making an order against a person called a parent. I have not delved into the question of some of the problems that might arise about who the parent is with some of these kids. One of the reasons that the Department for Community Development might be a bit reluctant to get involved in this is that if children are under a protection order, the children are made, in effect, the legal children of the director general of the department. He may or may not appreciate that - I do not know. In this case, it is a she, so she may not. There might be a bit of reluctance for the Children's Court to fine Ms Brazier. However, it is the concept of how best to engage what is going to be, usually, a very disadvantaged part of the community by getting them to court, convicting them, fining them and going through all that stuff. They are very often already alienated. They already hate authorities.

**Hon GIZ WATSON:** Perhaps your experience in the court system is that possibly it is likely to have the reverse effect.

**Judge Jackson:** It may well do.

**Hon GIZ WATSON:** It would actually make them less likely to cooperate and more likely to feel punished.

**Judge Jackson:** That is certainly very much on the agenda, I would have thought. One of the other issues is the extent to which retribution would be wreaked on the children for a fine imposed on the parent. In a lot 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.

**Hon GIZ WATSON:** Finally, you mentioned the experience in New South Wales. Even though this might be there as an option, the courts might be reluctant to actually use it, given their own experience of what works and what does not.

**Judge Jackson:** It is not for me to speak. The good news is that I am retiring in August, so it is not going to affect me. However, that would be a feeling I would have. This is provided for in the bill. To be fair, if you look at the bill - I have forgotten the clause numbers - there is provision that the court should not make the orders if it thinks they will be not be of use, and it is spelt out in a bit of detail there. However, I think that is something that the court would be concerned about.

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**CHAIR:** I think that concludes the questions we have to ask you. Thank you very much, judge, for appearing before the committee today.

**Judge Jackson:** It was a pleasure.

**CHAIR:** You will receive the draft copy of the Hansard transcript in a short time. Thank you very much.

**Hearing concluded at 10.36 am**

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