

Actions Speak Louder Than Words: An Ombudsman's Office and Children

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Ombudsmen and other organizations around the world are working hard to improve the situation of children and young people, and developing innovative methods of achieving these aims. This paper discusses the work of the office of the Ombudsman of New South Wales in this area. Our office is responsible for, among other things, reviewing the situation of children in care, some child deaths, complaints about provision of community services, young people in custody, and – perhaps uniquely – allegations of misconduct by public servants dealing with children. Our staff are conscious of the need to communicate effectively with young people, and to enhance the effectiveness of young people's interactions with us. We have evolved from a reactive complaint-handling body into a strategic, community-focused and proactive office. To remain relevant as ombudsmen, we need to be drivers of change, to look for better and more effective ways to operate and reshape the ombudsman model to keep pace with community needs and expectations.

There are some things about which there can be no debate. All children are vulnerable. The effective care and protection of children should always be front and centre in any public policy debate. And children are frequently, if not always, reliant on others for representation, essential services and support.

More than 100 million children are living on the streets around the world. Child trafficking has reached a rate of 1.2 million each year. Around 250 million children between the ages of 5 and 14 are working, many in the worst possible conditions with no protections. In the Asia Pacific region alone, approximately 127 million children under the age of 10 are working. This is six times the population of my home country of Australia.

In 2007, it was estimated that more than 10 million children die each year before they turn five. That means 30,000 child deaths every day.

These are staggering, tragic, incomprehensible facts. For many living in developed nations, such as Australia, these problems seem a long way away. They are the problems of other countries, poorer developing countries – not our own!

This is quite simply not the case. Through our work with children, we see some horrific circumstances where children and young people are being let down. While the scale of the problems and type of issues faced will differ from continent to continent, country to country – the underlying principle remains the same. Children need to be protected, and as a community we have an obligation to meet that need.

My home state of New South Wales (NSW) is one of six states and two territories that make up the Commonwealth of Australia. NSW accounts for over one-third of a national population of 22 million, and covers an area of over 800,000 square kilometres. To help visualise that, it is about twice the size of Sweden. Approximately 24% of the state's population is under the age of 18.

Responsibilities for providing services are divided among the state and the federal governments. The states are responsible for, among other things: Hospitals, schools, transport, community services, policing, and prisons.

My office's jurisdiction extends to all of these services, in some cases even when they are being provided by non-government organizations and private service providers.

This paper will focus on our work with children, but the work of our office touches on the circumstances of many of the most vulnerable in our community.

We also receive complaints from those being held in correctional facilities. There are 28 of these, and in 2008 they housed almost 11,000 people. Prisoners have immediate and unmonitored access to our office by telephone and confidential correspondence. We also visit all correctional centres, speaking to both inmates and staff. In addition, we monitor and take complaints about the standards and work relating to our public guardian system.

Clearly much, if not all, of the work of an ombudsman has the potential to benefit children and young people, either directly or indirectly. This paper will also outline the important and practical impact an ombudsman's office can make on the lives of the young. I hope specific examples will provide greater clarity to the issues and take us from general principles to practical strategies and possible outcomes.

Our key work involving children includes:

- reviewing the deaths of certain children
- reviewing the situation of children in care
- dealing with complaints about the provision of community services and the care and protection of children
- coordinating and overseeing the Official Community Visitors Scheme, and
- promoting the development of standards for the delivery of such services.

We also have a unique role in employment-related child protection. We oversee investigations into allegations against employees relating to improper conduct with children. We are also responsible for scrutinizing the systems put in place to ensure that all allegations and complaints about misconduct with children are handled and responded to correctly. This role brings more than 7,000 public sector agencies and non-governmental organizations, including independent school providers and churches, within our jurisdiction.

Whilst undertaking these specific responsibilities, we have for some time chosen to prioritize our discretionary work in such a way as to ensure that

those who are the most vulnerable in our community are as well protected and supported as possible.

What we have learned over the years is that it is not enough to have well considered and drafted laws, sound policies and procedures. For many specialist agencies, such as Children's Commissioners, the enactment of new laws or establishment of improved policy or procedure is often a goal of their work. We go beyond this and look at the impact of these measures on a single child, a group of children, or all children in NSW. We also assess whether laws and policies are effective, whether they are delivering what they were designed to do. This focus on service delivery allows us to look at front-line practices – what is actually happening, rather than what should be happening. There are many, perhaps enough good laws and policies in place – what remains of concern is their implementation.

Our work can also have a profound effect on government policy and the allocation of funds. A special report to Parliament resulted in a major restructuring of the department responsible for providing community services in NSW and for the care and protection of children at risk, as well as the injection by government of an extra \$1 billion of funding. This allowed the agency to expand their services, provide more case workers and ensure better support for vulnerable families and their children.

I recognize that my office is far from alone in our work for children. Ombudsmen, specific children's ombudsmen, children's commissioners and other organizations around the world are working hard to improve the situation of children and young people, and developing innovative methods of achieving these aims. This paper discusses the work of my office. It is of course what I know best, and I would like to provide you with a brief insight into some of it.

Since 2002, we have been responsible for reviewing and reporting on certain child deaths – where the child has died as a result of abuse or neglect, in suspicious circumstances, or where they or a sibling had been reported as being at risk of harm. In 2007, there were 162 such deaths, 43 of which were the result of abuse or neglect or occurred in suspicious circumstances. While the more serious matters go before the coroner and occasionally the courts, it is still important that we review and learn from these deaths. The nature and breadth of our jurisdiction means we are able to look at the action, or inaction of all of the involved departments and non-government agencies, identifying what went wrong and what improvements might be needed to reduce the risk of such deaths in the future. Reviewing a broad range of deaths also means we are able to identify systemic failings and make recommendations to overcome them.

These cases are always disturbing. Let me illustrate why such reviews are so important with one tragic example.

A young girl was found dead in her home. She was seven years old, but only weighed about nine kilograms. She had quite literally been permitted to starve to death. When her parents were brought to trial recently, the forensic pathologist told the court that it was the worst case he had seen in his 30 years on the job. The public prosecutor told the court in his opening address that the

child's face was distorted due to muscle wasting and there was no fat under the skin, and he warned the jury about the disturbing images of extreme malnutrition they would see. In October 2009, the girl's mother was found guilty of murder and sentenced to life imprisonment. Her father was found guilty of manslaughter, and was sentenced to 16 years in prison.

When investigating this child's death, we found that she and her family had differing levels of contact with various government departments since her birth, including those responsible for providing community services, housing, health, education and policing. She and her siblings had been absent from school for extended periods of time. A number of people, including departmental case workers, had been refused access to the child by her parents. On one of the few occasions she was seen, a general practitioner noted that she was extremely underweight. These were all warning signs, but unfortunately this information was not shared effectively, nor was it acted on with sufficient urgency.

We have found the children whose deaths we review and their families rarely come into contact with only one department, and it is rarely limited contact. Multiple agencies typically have involvement with vulnerable families and children. Sadly, despite repeatedly raising the need for better cooperation and information sharing, these different departments do not interact and work together as effectively as they could or should.

My office's role in relation to child deaths will soon expand. We will also be responsible for convening the Child Death Review Team, which collects and analyses information about all child deaths in NSW. This will enhance our ability to identify systemic issues, and hopefully help to reduce the number of preventable child deaths in NSW.

Child deaths can always be guaranteed to garner much community attention and outrage. Action can often be swift. However, sadly, there is often less focus on and interest in the quality of care given to those children who are "in the system."

There are more than 14,000 children in out-of-home care in my state. These children are predominantly placed in foster or kinship care – some are housed in dedicated services and centres. These are children who have often experienced extremely difficult lives, and have had to be removed from their natural parents for their own safety and well-being. Our office is responsible for monitoring the way they are treated, ensuring they are provided with the best possible care and chance in later life. In the last year, we have conducted two large reviews – one looked at the situations of children under five years old, while another looked at children between the ages of 10 and 14.

Both of these reviews identified similar issues – the importance of effective care planning, attention to the individual needs of the children, ongoing case management and support as key factors in making sure placements serve the best interests of children.

To support the best interests of these children, we are responsible for administering a scheme under which visits are conducted to the centres and services providing out-of-home care to children and young people, and people with a disability. There are 145 separate out-of-home care services for chil-

dren and young people that are visited. This program allows those living in care to share their concerns and complaints face-to-face. While there are limitations on the number of visits that can be conducted each year, the visitors try to get back to each centre a couple of times, allowing them to track progress and follow up on issues of concern. This will have the added benefit of minimizing the number of unresolved issues that might be escalated.

We also have what many may see as a most unusual role relating to the protection of children. Indeed, it may well be unique. Following a Royal Commission over a decade ago which, among other issues, identified failings in responding to allegations of misconduct by staff dealing with children, my office was provided with responsibility for overseeing the way in which such allegations are dealt with. When an allegation is made in a school, child care centre, or any other workplace caring for children, we monitor the way in which that allegation is handled, assessing factors such as the standard of risk assessment and management as well as the appropriateness and quality of the investigation. We are also required to scrutinize the systems in place to handle such allegations. This allows us to monitor the systems in place, rather than just dealing with specific allegations. Many of these organizations are non-governmental, and many are run by religious institutions.

The majority of allegations raised relate to physical and/or sexual assault or neglect of children by those employed to look after them. This includes teachers, child care workers, community service staff, employees of the juvenile justice system and others.

Not surprisingly, once we assumed this new responsibility, we were initially met with reluctant and occasionally hostile responses to our involvement. Many private and religious institutions had never before come within the jurisdiction of the Ombudsman.

I am pleased that, 10 years on, there has been a distinct change in attitude and processes among the agencies. We now work in a largely co-operative way – and there is clear recognition amongst employers and those working with children of the need for strong systems to prevent child abuse.

One of the key emerging challenges is the response of many organizations to instances of “grooming” – the development of inappropriate relationships between adults and children for improper purposes. Such conduct has to be dealt with swiftly and appropriately, because it has the potential to quickly become serious and damaging. Research has shown that many of the inappropriate relationships that develop and abuse that takes place are a result of situational factors, rather than predatory behaviour. Reacting quickly and correctly can remove that opportunity and limit risk.

This issue is certainly not unique to NSW. Recent events in Ireland are only one example of the need to remain vigilant and not assume that, merely because a large established institution such as a church is looking after children, they are necessarily safe from harm.

Our work does not only target those children who are most vulnerable and at risk. We also focus on improving the services provided to all children in NSW. One of the best ways of achieving this is to change the thinking within public sector agencies as well as that of young people themselves.

My office has a dedicated Youth Liaison Officer, whose responsibilities include helping agencies to realize the importance of engaging effectively with children and young people.

We have issued guidelines to agencies on the best way to handle complaints from children and young people. These have been well utilized by front-line complaint handlers, and a large number of non-governmental organisations also use them to guide their interactions.

In the area of child protection in the workplace, our office staff regularly provide practical training to agency staff in investigating allegations of inappropriate behaviour towards children and young people. This training has led to improvements in information gathering, better practice in interviewing children, and effective risk assessment and risk management around investigations and managing difficult situations.

It is now common practice among ombudsman offices to ensure children actively participate in their processes. Our staff are conscious of the need to communicate effectively with young people, and to enhance the effectiveness of young people's interactions with us. This is particularly important when young people lose their liberty and are incarcerated.

We monitor all juvenile justice centres in NSW. There are nine, housing an average of 390 young people each day. We regularly visit and inspect the centres, talk with staff and detainees, and are available to deal with any complaint they may have.

Fortunately, not all of our young offenders are given custodial sentences. In the last year, almost 4,000 were given community-based orders, requiring them to complete community service instead of a custodial sentence. If they fail to do so, they can be placed within a juvenile justice centre. Some 85% of young people given these orders saw them through, staying out of detention.

Our work with juvenile justice is both frustrating and challenging. The issue of detaining children and young people is a very difficult one. While society has deemed certain conduct as unacceptable, it is important to do everything possible to ensure children are not merely institutionalized and lose hope of a better future through juvenile detention.

Certain standards have been developed for detaining children and young people in NSW. These, in basic terms, include housing each child in their own room with bathing facilities – and appropriate educational opportunities and guidance are also seen as critical elements.

Unfortunately, over a number of years, due to an unexpected increase in numbers, we see some centres trying to cope with inadequate facilities. Children are now sleeping several to a room, often in rooms that were not intended for multiple accommodations, and bathing facilities being shared by increasing numbers. Many of the temporary centres are not equipped to provide essential services, such as education and proper exercise. These issues present real risks, not only in terms of a young person's long-term future, but also to their immediate safety and well-being, as well as the safety of those staff charged with their care. There has also been the very real risk of adolescents being transferred to adult prisons, which is clearly unacceptable.

The overcrowding that we are seeing is largely the result of a “law and order” focus by successive NSW governments, often without considerations of the longer-term effects and consequences.

The European Commissioner for Human Rights observed in relation to juvenile justice that:

There are two different trends for the moment in Europe. One is to reduce the age of criminal responsibility and to lock up more children at younger ages. The other trend is – in the spirit of the UN Convention on the Rights of the Child – to avoid criminalization and to seek family-based or other social alternatives.

NSW has not gone down the road of reducing the age of criminal responsibility, but I do not feel that we have done enough to fit within the commissioner’s second category. Recent amendments to our Bail Act have seen a drastic increase in the number of children and young people being held for long periods of time in detention, only increasing the overcrowding and risk issues. To date, the government’s response has been woefully inadequate, focusing on stripping back resources, rather than adding them.

There have, however, been some recent developments that suggest a little light at the end of the tunnel. A pilot program is currently operating in two regions in NSW aimed at providing support for offenders and their families in an attempt to stop the young person from re-offending. This important program recognises the varied impacts on a young person’s behaviour, and I hope to see it used more widely. The government has also instituted a review of juvenile justice by a private consultant. It will be interesting to see what they recommend.

The Australian government recently became a signatory to the UN Optional Protocol to the Convention Against Torture. The government also indicated legislative change would soon follow to bring the requirements of the protocol into force. This will involve additional reviews of correctional centres, including juvenile justice centres, similar to those we already conduct. It is likely that my office – like other ombudsman offices around the world – will play a role in meeting these implementation obligations.

Let me turn now to a particular challenge not only for my office but the broader community and governments at all levels and in many countries: The difficulties faced by our indigenous communities. One of the greatest failings of both my home state, and Australia as a whole, is the ongoing poor conditions experienced by our indigenous population. Aboriginal Australians experience unacceptably high levels of disadvantage, poverty, disease and death. These conditions mean that aboriginal children are a particularly vulnerable group. They are more susceptible to abuse and die at higher rates and at younger ages than the non-indigenous population. As well, the placement of aboriginal children in out-of-home care between 1996 and 2005 was more than six times higher than for other Australian children.

In NSW, aboriginal children account for 31% of those living in out of home care. This is even more alarming when you consider that aboriginal children are only 4% of the total child population in NSW.

As part of our focus on children and young people and their carers, in 2007 my office began a project aimed at assessing the level of support being provided to these children. This was a large undertaking, and it involved a great deal of work.

We travelled throughout the state, visiting a number of regional centres as well as remote communities. During these visits, we met with 100 foster carers, both aboriginal and non-aboriginal, who were caring for aboriginal children, and asked them about their experiences. Between them, they were caring for 185 children. Their stories were often particularly powerful, and I will turn to some of these in a moment.

We were mindful of the need to get input from all involved parties. We spoke with front-line staff from the relevant governments departments, as well as representatives of key non-governmental organisations working with and on behalf of carers for aboriginal children.

The words of the carers themselves show the difficulties they face. One carer told us they:

... agreed to take an emergency placement. It turned out that he was a four-year-old autistic child. He was dropped off at 6 p.m. on a Friday night – we were just given the paperwork and a school bag. He was in nappies but we were given no extra nappies or information on how to deal with an autistic child. We did not have a visit from a caseworker in 18 months. He was supposed to stay the weekend but he ended up staying for 2 ½ years. We were about to pull out of the placement but we felt sorry for him, because he'd been through so many placements.

Another commented that:

We received none of the documentation that we requested over a 3 ½ year period. We asked for a Medicare card and were told that: 'we'll get to it, we're really busy.' She gets kidney infections, so I wanted her medical history but it never came.

A third carer told us:

Our child suffers from cerebral palsy, so we requested a walking frame – it took 18 months to arrive. It took one year to get a Medicare card from DoCS. We requested a bathtub in late 2005 and were told in early 2007 that we would be given a hob-less shower. Eighteen months ago we submitted a travel claim because we needed to get him fitted for ankle and boot orthotics but we still haven't received payment.

We concluded that the well-intentioned and comprehensive policies and procedures were not necessarily transforming into sound practice and support. The system was not working effectively. By going out and speaking directly with the carers, we were able to identify ways to improve the level and quality of support they could draw upon and to turn these into meaningful, helpful recommendations for change.

Our office has for some time had a dedicated Aboriginal Unit, which was an integral part of the project. But support for foster carers is only one of a range of issues facing aboriginal children.

We work closely with both police and aboriginal communities to improve the way they interact with one another. We have seen marked improvements,

particularly in the relationship between police and aboriginal children and young people. Both police and community members have commented that our involvement has made a real difference.

The government recently announced an inter-agency plan to target child sexual assault in aboriginal communities, a problem that continues to exist at an alarming level. We have been tasked with auditing the implementation of the plan, which creates obligations and responsibilities on those government agencies interacting with aboriginal communities.

It is clear that there are many different ways an ombudsman office can creatively engage with the community and through that work indirectly tackle important issues for children and young people. Different strategies will deliver different outcomes. The following two projects are examples of this.

They both involved a substantial commitment by my office, demonstrating the importance we place on this type of work. They are broad-ranging, systemic, outcome-focused projects, which aim to achieve better outcomes for the broader community, and lead to specific benefits for children and young people.

The first example was an own-motion investigation into the police response to instances of domestic violence. Domestic violence rarely has just one victim. A recent survey of women who had experienced domestic violence found that 57% had a child in their care during the relationship. Some 37% reported the child had witnessed the violence. Our work in preparing this report, as well as our earlier work with police, showed us that many children and young people from households experiencing domestic violence were involved in anti-social or criminal behaviour. They often ended up doing these things purely because they were out late at night and did not want to go home.

While the central focus was policing, we looked more widely. Departments charged with providing community, housing, education, and health services were all involved. As with many other areas of our work, especially relating to children, we found there was an urgent need for a more coordinated response from all departments to situations where children may be exposed to domestic violence.

The government response to our final report was very positive, with a range of legislative reforms, changes to police operating procedures, and a greater level of protection provided to the victims of domestic violence, as well as their families.

The second example is a one-and-a-half-year-long investigation, which we will soon finalize by way of a special report to Parliament. We have been assessing the implementation of the state-wide guarantee of service for people with mental health problems and disorders living in aboriginal, community and public housing. This is of great importance for children, as those with a mental illness may not be able to advocate for their own, or by extension, their children's rights to assistance and support.

We travelled throughout the state, consulting with 460 people with experience working with existing or potential social housing tenants with mental health problems. We conducted field audits in 25 different metropolitan and

regional locations. This gave us access to front-line workers who shared their experiences.

We found evidence of good work in some areas, and a large number of committed, passionate individuals working to achieve good outcomes for those living with a mental illness. However, the guarantee of service has not been effectively implemented, and there is little evidence that it has achieved systemic improvements. Our recommendations point to a simpler, more co-ordinated system providing better support and sustainable outcomes.

In addition to our project work, we are also tasked with reviewing new legislation from time to time that provides police with additional and often extraordinary powers. We recently completed a four-year review of legislation that provides police with, among other things, the power to search people. In addition to collecting information from police and courts, we asked some of those who had been searched about their experiences. We found that a number of young people were searched by police without a support person present, as required under the Act. There will always be situations where police will have to search young people, but it is important that it is done appropriately, and with due regard for their special circumstances.

Before finishing up, I would like to talk briefly about the importance of research. We conduct research both independently and with other agencies. One such example is a recently completed research project entitled *Young People and the Internet*. This project, funded by the Commonwealth Department of Immigration and Citizenship, builds on our earlier work around the exploitation and abuse of children by employees. While this was its central focus, the final report also analyses the use of the Internet as a recruitment tool by extremist groups. This work will be utilized by the Australian Government to develop its response to the risk of such recruitment.

Where do we go from here?

All of this work has shown us the importance of making sure that children, particularly those at greater risk, are provided with the care, protection and support they need. With this in mind, we are planning our next major project, aimed at assessing the standard of services provided to young people at risk. This will bring together all of the topics I have touched on today: Out-of-home care, community services, housing, juvenile justice and policing.

The challenge for all of us is how to best utilize our offices, direct our resources and use our powers to help those who most need our help.

This IOI World Conference marks the 200th anniversary of the creation of the Swedish Ombudsman and presents us with a rare opportunity to look critically at our role as a group. The work of ombudsmen, and the way in which they operate, has changed greatly over the last two centuries. This should not be surprising or concerning. Indeed, this is how it should be. No government or community has remained static during this time.

We need to accept that change will happen, and we need to be the drivers of this change, to look for better and more effective ways to operate, to reshape the ombudsman model to keep pace with community needs and expectations, to explore and question – to see as possible what we have previously thought was not. This will be essential if we are to remain relevant. Thinking

this way has taken my office into very different decision-making practices, thinking carefully about where we place our focus and the way we prioritize and undertake our work. We have evolved from a reactive complaint-handling body into a forward-thinking, strategic, community-focused and proactive office. We use the core principles of our Swedish heritage, build on them, develop them to meet the needs and circumstances of our own community, place them in today's context and plan for tomorrow.

However, while the role of our offices will and should continue to change, there will always be one constant. There will always be those in our communities who are particularly vulnerable, in need of assistance and often a stronger voice. Our work must always ensure they receive the best possible protection, care and support.

Appendix A

NSW Ombudsman's work with children: links and resources

This paper demonstrates the breadth of the NSW Ombudsman's work relating to children and young people. The following are some of the reports produced every year, as well as some special reports to Parliament and resources relating to this important work. These can be accessed at the Ombudsman's website: www.ombo.nsw.gov.au.

Annual Reports

- NSW Ombudsman Annual Report
- Report of reviewable deaths: Child deaths
- Official Community Visitors Annual Report

Guidelines

- Guidelines for dealing with youth complaints
- Child Protection in the Workplace: Responding to allegations against employees

Reports to Parliament

- Domestic violence: improving police practice
- Working with local Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003–2006)
- DADHC – The need to improve services for children, young people and their families
- Review of individual planning in DADHC large residential centres
- Review of certain functions conferred on police under the *Law Enforcement (Powers and Responsibilities) Act 2002*
- Group review of the situation of children younger than five in out-of-home care and under the parental responsibility of the Minister for Community Services

- Review of a group of children aged 10 to 14 in out-of-home care and under the parental responsibility of the Minister for Community Services
- Family Support Services Complaint Handling Review
- Supporting the carers of Aboriginal children
- Submissions to the Special Commission of Inquiry into Child Protection Services in NSW
- Review of the Child Protection Register

Facts Sheets

- Child protection fact sheet No 01: Keeping records
- Child protection fact sheet No 02: How we assess an investigation
- Child protection fact sheet No 04: Planning and conducting an investigation
- Child protection fact sheet No 05: Child protection: Responsibilities of heads of agencies
- Child protection fact sheet No 06: Addressing child protection issues in codes of conduct
- Child protection fact sheet No 07: Recognising and managing conflict of interests
- Child protection fact sheet No 08: Reviewing child protection policies: an agency self-assessment checklist
- Child protection fact sheet No 09: Risk management following an allegation against an employee
- Child protection fact sheet No 10: How the Ombudsman audits agencies that provide services to children
- Child protection fact sheet No 11: Apologies and Child Protection
- Community Services Division fact sheet No 3: Reviewable deaths – children and young people, and people with disability
- Information sheet: Child protection policy framework for children's services
- Information sheet: NSW Ombudsman's work with Juvenile Justice
- Police fact sheet: Advice for people working with youth: Young people with complaints about police
- Public sector agencies fact sheet No 25: Youth participation