

Advocacy for Children

*By Moira Rayner**

Philanthropists are not particularly keen to fund advocacy for children, any more than governments are. It is far more appealing to fund a service for a child – an attractive, slim one in callipers, perhaps – than to help a homeless street kid deal with a drugs charge, or to stay in school, or have a say in the Children's Court on what should happen on a care and protection application, or in the Family Court about who lives where. Yet the charitable would have nothing to give to, if children didn't have advocates.

Children need advocates, because they cannot look after their own interests. Parents are supposed to do this for them: some don't, or can't. Children aren't heard by many of the adults who make the decisions that affect them most – teachers and school administrators; governments who decide what resources will and won't be available to their families, or to the children themselves; welfare workers; magistrates; and by the police.

Advocacy for children is not about undermining parents or divorcing families, nor about eliminating childhood for a kind of quasi-adult 'autonomy'. Child advocacy is, as a NSW Parliamentary Committee said

last year, "about taking a proactive approach to ensure that all children have the opportunity to reach their full potential as human beings".¹

By the time you read this, the Australian Law Reform Commission (ALRC) and the Human Rights and Equal Opportunity Commission (HREOC) should have given the Commonwealth Attorney-General their joint report on children and the legal process. It will be yet another statement that children are grossly disadvantaged in protecting their interests, rights and freedoms. Our legal system denies them a voice – bullied into silence as witnesses; lost in care; expelled without recourse from schools; exploited and abused on the streets and in the systems designed to protect them. In principle, children, as people, have the legal right and interest in having a say in decisions that are likely to affect them: children, as citizens, should have better access to the processes of government that directly affect them; children, as human beings with social rights, ought to have equal access to the law, and the community has a duty to take their rights, and children, seriously.

The Commissions' reference came out of the Keating government's Justice Statement in 1994. It was the

Commonwealth's principal contribution to the advocacy needs of children² and was originally suggested by The National Children's and Youth Law Centre. Our submission had urged the reference, and established the need for an adequate network of child advocates throughout Australia. We asked for a band of specially trained advocates and advisers who could help children negotiate, with dignity and control, the family, criminal, welfare and administrative and legal systems; with government bodies whose decisions affect them (housing, education, health and social security); and, when they needed it, with their families.

Advocacy is about systems, and individuals in them recognising the rights and needs of all children, and responding to them. The record, so far, is not a good one.

There are, around Australia, perhaps 50 'child advocates' – people who make a speciality of working with children. There are hundreds of thousands of children in need of advocates. Fourteen per cent of Australian children – more than 700,000 – are so poor that they sometimes go hungry, the second highest proportion in industrialised countries (only the US has a greater proportion). In the past seven years, reports of child abuse have steadily

mounted, along with evidence that entering State care kick-starts a career of poverty and homelessness. Child homelessness has clearly risen, not dropped, since 1989, when HREOC published its devastating *Homeless Children* report³. Many of those children interviewed nine years ago have disappeared. There are, today, far more Aboriginal children in custody and State care than there were six years ago⁴, when the Royal Commission into Aboriginal Deaths in Custody reported, the year after we signed the UN Convention on the Rights of the Child (CROC), and we broke the Hawke government's promise that "by 1990, no Australian child will live in poverty".

On August 26, 1997, Commissioner James Wood released his long-awaited report of the NSW government's Royal Commission into paedophilia. This secondary inquiry, following his investigation into police corruption, was forced upon government when revolting evidence was disclosed of police, and other government authorities responsible for the protection of children, failing entirely to act against notorious, self-confessed and active paedophiles.

In Queensland, two weeks before, Norm Alford, Queensland's Children's Commissioner, had published his own report claiming - without evidence - that paedophiles grazed freely in that State, and that thousands of children had been and would be the victims of their 'love'. He called for greater police powers to break up the 'rings' and the establishment of a special office to deal with child sex abuse. In Victoria, that week, *The Age*⁵ published details of an internal government report estimating that eight per cent of Victoria's wards were exposed to paedophiles: it did not call for any action at all.

Commissioner Wood recommended a raft of reforms: a national paedophile register, and constraints on convicted offenders' freedoms; better checks on child-oriented occupations, and a mandated obligation to notify welfare authorities of suspected sexual abuse on everyone - though to the very department that Commissioner Wood revealed had utterly failed to protect children. He wanted national child sexual offence laws and sentences, and improved ways for children to give evidence and training for judges and lawyers in child development matters, so that they could better control the questioning of children. He wanted structures to force government agencies and police to stop fighting over 'turf' where children were affected; proper coordination of children's policies, and the establishment of a Children's Commission, to oversee his panoply of improvements.

Yet the message of each of these reports on child abuse was the same. Children who claimed that they were abused, assaulted, raped and imprisoned were disbelieved: the systems did not permit them to speak and be heard. Institutions refused to accept that their staff could act so disgracefully. Police gave priority to 'operational requirements', were unduly deferent to religious bodies and respectable men, and education and child protection systems were 'slack'. Children did not know and could not claim their rights, even their right to bodily integrity. They lacked an institutional voice and any advocacy. That is the problem. Our social and legal systems do not legitimate child advocacy.

The National Children's and Youth Law Centre is a child advocacy body. It was established with seed funding from the Australian Youth Foundation, a nongovernment body. Our centre is the only national community legal centre that works exclusively for and with children and young people and it is supported by the Universities of Sydney and New South Wales and the Public Interest Advocacy Centre. The centre promotes the rights and interests of disadvantaged Australian children by advocacy, lobbying, test case litigation, information collection and dissemination, and research. Since 1993, the Centre has made more than 70 submissions on laws and policies which affect children and has handled more than 3,000 complaints. It has also been unable to attract funding other than project funding, except from the Justice Statement. Although there is a scattering of child advocates around Australia, after this year's cuts to Legal Aid, many have now left their Legal Aid Commissions, and aid is rarely available for children's legal representation, even when the Family Court orders it.

We have moved into an intensely difficult time for children, into an economy that provides fewer government services and leaves the rest to the market. It is important to state that children do not articulate the 'demand' on which their life chances depend. There is no reason why commercial or business interests should act altruistically to address children's supposed interests. We cannot leave children's interests to market forces, because they have rights that need protection.

The very concept of rights, of any kind, is not especially popular in government circles. Australian enthusiasm probably peaked when we signed the *UN Convention on the Rights of the Child* in 1990. We agreed to protect the child's right to be reared "in a family atmosphere of love and understanding" where they could achieve their full potential; to protect them from abuse and exploitation and ensure that they recovered from the effects of maltreatment, and in particular that we would:

"Article 4:

... undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States' Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation."

and

"Article 12:

(1) ... assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

"(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

In even asking whether children have rights to hold and express an opinion, a value statement is being made. 'Rights' implies the standing to claim them.

"We love children and want them to be protected and nurtured. We hate children and want them to be fully responsible for their actions..."

To some it seems easier to say that children have needs, and adults have duties to meet those needs. This is no longer a tenable view: adults have duties to children, undoubtedly, but unless we admit that children have human rights, children do not have an equal claim to control, limit or require the action of other people. Children may not have the social, emotional, intellectual or economic competence or even the experience to decide where their 'best interests' require something to be said or done to protect them: child advocates may be accused of putting words in their mouths.

But their parents and carers might not be effective advocates for children. Should the child suffer, as a result? Personal relationships and private duties are not a sufficient substitute for human rights, and especially participative and social rights.

Children need such recognition, so that cruelty and abandonment, family disintegration and acts of violence cannot be privatised and hidden away. Rights-ownership recognises the essential equality of every human being. By saying that children have rights, we stop trivialising their claims as special or benevolent treat-

ment options. Rights are about dignity, respect, liberty, opportunity, and participation. They are not a matter of choice.

Our attitudes to child advocacy arise from our deeply ambivalent approach to children:

*"We love children and want them to be protected and nurtured. We hate children and want them to be fully responsible for their actions. We exploit children, if not in the mines and factories, then in the vast consumer and entertainment industries which increasingly define childhood in North America and Western Europe. The lines between innocence and experience, infancy and puberty, no responsibility and full responsibility, sentimentalization and exploitation, are slippery."*⁶

'Rights' are also costly. If, as so many reports have recommended before, the ALRC and the HREOC recommend improved advocacy services for children, a cross-government approach to children's service delivery, and a statutory office for children – even a Children's Commissioner – it will come at a cost, and one that a community at least momentarily appalled by paedophiliac crimes may be prepared to pay for. They may even have to lobby for the privilege of a new tax to fund it. It is far harder to implement children's rights than it is to agree that they ought to have them.

In the years I have worked within inadequate, grossly under-resourced and often largely unenforceable human rights laws and systems I have learned three things.

The first is that though it is necessary to state ethical absolutes about rights, wrongs and duties, creating a climate of moral rectitude about children is fruitless. Preaching to children is of little use – children have a great talent for detecting hypocrisy – and preaching about them is merely self-gratification.

The second is that a child who is treated with respect, gives and demands respect. A loved child is a poor target for a paedophile. Parents, teachers and adults who respect children as people will teach them civic virtues, and protective instincts, far better than sermonising.

The third is that ethical statements about children's rights (or any rights), and benevolent projects or programs, will achieve no lasting benefit for children without some element of compulsion or coercion – at least a public naming and shaming. Governments are very proficient at making promises to improve the lot of children: we forget until the next scandal, how quickly those promises are forgotten.

* *Moira Rayner chairs the board of directors of the National Children's and Youth Law Centre.*

End-notes

1. *Parliament of New South Wales Legislative Council Standing Committee on Social Issues, Inquiry Into Children's Advocacy. Report Number 10, September 1996, p.vii.*
2. *The others were the provision of four specialist child advocacy positions in community legal services and funding for two positions in the National Children's and Youth Law Centre, whose board I chair.*
3. *Human Rights and Equal Opportunity Commission, Report of the Inquiry into Youth Homelessness, Our Homeless Children. AGP, 1989.*
4. *In Western Australia, to give a notorious example, Aboriginal children are likely to be locked up at 32 times the rate of non-Aboriginal children (source: Annual Report of the Commissioner for Aboriginal and Torres Strait Islander Social Justice, Human Rights and Equal Opportunity Commission, 1996).*
5. *August 25, 1997.*
6. *A McGillivray, Why Children Do Have Equal Rights. International Journal of Children's Rights, Volume 2, No. 3. 1994. 243, 249.*



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