

Office For Children needed to Overcome 'Appalling' Children's Services

An Office for Children (OFC) should be established to develop policies to overcome the appalling state of Australian systems for the care and protection systems of children, serious deficiencies in children's services and the marginalisation of children involved in legal processes.

The OFC, which would operate within the Prime Minister's Department, as one of the major draft recommendations arising from a joint inquiry by the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission into the impact of legal processes on children.

The draft recommendations paper, *A matter of priority: Children and the legal process*, was prepared after extensive community consultation. Further submissions are sought before the report is provided to the Attorney-General later in the year.

Under the Commissions proposals, the proposed OFC would consult with interest groups, including children, develop new strategies and standards for children's contact with legal processes

and government authorities. It would also provide policy advice giving priority to children's issues.

Other draft recommendations include:

- power for State and Territory children's courts to hear federal family law matters and for the Family Court to hear care and protection applications under State legislation, to overcome duplication of proceedings
- development of a specialist State Family and Children's magistracy to exercise family law jurisdiction
- a specialist Family Court magistracy to simplify the court's structure and increase capacity
- a Charter for Children in Care
- national care and protection standards
- a multi-disciplinary working party should be established to develop protocols on videotaping of evidence of child witnesses
- a presumption against child witnesses giving live evidence at committal hearings
- a presumption in favour of the use of closed circuit television for child wit-

nesses

- specialist children's units in Legal Aid Commissions
- national guidelines in the use of cautions by police, to reduce the scope for differential treatment
- legislation in all jurisdictions to ensure that young people obtain legal advice prior to formal interviews.

In releasing the draft recommendations paper, ALRC president, Alan Rose said, "The Commissions are also disturbed by the discriminatory impact of legal processes, particularly on indigenous children in the juvenile justice and care and protection systems". The Human Rights Commissioner, Chris Sidoti pointed to the Commissions' concern over the shift to more punitive, less effective regimes for young offenders in juvenile justice systems. "This has been justified by a so-called juvenile crime wave when, in fact, there has been no significant increase in juvenile crime in Australia over the last decade. Our consultations have made it clear, that poor police/youth relations are endemic in Australia", he said

Tax Office Tactics on Split Loans "of Grave Concern" - LCA

The Law Council of Australia says it is "gravely concerned" at recent action by the Australian Taxation office of effectively issuing a decision by media release on the outlawing of tax benefits for so-called split loans.

The Council is warning that the new Tax Office approach will have an extremely detrimental effect on the ability of many small businesses to stay afloat.

Split loans have previously enabled small businessmen to link business loans to personal loans, with the interest on the business part of the loan being made tax deductible. The ATO is now applying the anti-avoidance provision (Part IVA of the Income Tax Act) to interest claimed in split loans, meaning the deductibility of interest payments on such loans will be illegal.

"The Law Council is very concerned with the ATO's behaviour, and timing, on this issue," says President of the Council, Mr Peter Short. "This is the first time since the High Court *Spotless* case that the ATO has sought to apply the anti-avoidance provisions to common - and legitimate - business arrangements, despite assurances to the contrary."

"Part IVA should be used against tax avoidance arrangements which have no commercial substance. It should not be used, particularly just prior to the end of the financial year, to frighten tax payers and banks who enter into normal and proper commercial arrangements with respect to the repayment of money borrowed for commercial purposes."

"By issuing a press release shortly

before the end of the financial year, saying that a draft ruling issued in the coming financial year will explain the reasons for the decision can only be designed to frighten tax payers and bankers. The Tax Office's habit of legislation by tax ruling is of dubious legality, but taking that process one step further and legislating by press release is a misuse of power.

"The Law Council calls upon the Tax Office to clarify immediately its reasons for the new arrangements and to list exactly which types of split loans will be affected by the proposed ruling. It also calls upon the ATO to consult widely with various interest groups on the change, and to reassure the business community that it will not deny it deductions for interest properly incurred on business loans.