The Children and Young Persons (Care and Protection) Act 1998

Overview

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1. Introduction

The Children and Young Persons (Care and Protection) Act 1998 is expected to be proclaimed fully towards the end of the year 2000. It will lead to far-reaching changes to the law and practice of child protection in this State.

Examples of the changes are the following:

- Children and young people will be entitled to explanations about actions taken to protect them and as far as possible will be allowed to participate in making decisions which vitally affect their lives.
- Aboriginal and Torres Strait Islander families and communities will be more involved than under the existing Act when decisions need to be made concerning the protection of Aboriginal and Torres Strait Islander children and young people.
- Mandatory reporting will be extended to include child care workers and residential care workers.
- A new definition of when a child is at risk of harm will give people more specific guidance about when they may, and must report.
- The role of the Department of Community Services in responding to reports is clarified, and made explicit.
- Various forms of alternative dispute resolution are encouraged to avoid the need to bring care proceedings.
- Departmental officers considering the removal of a child on an emergency basis will first have to consider whether to ask the police to obtain an AVO to remove the alleged perpetrator instead.
- It will be a ground for care proceedings that a child under 14 is exhibiting sexually abusive behaviours. Therapy may be ordered.
- Proceedings in the Children's Court will use private meetings with a Children's Registrar to try to reach an agreement between everyone concerned which will ensure the safety and wellbeing of the child or young person without the difficulty and stress of a formal court hearing. Alternatively, they will be able to set a timetable for the resolution of the matter in Court. List days will be abolished.
- The range of possible orders the Court may make will be greatly extended and the Court may ask for follow-up reports to monitor the wellbeing of children and young people.
- Where it is necessary to remove a child from his or her parents' care, and there is a possibility of restoration, the Department will be required to develop a restoration plan, which identifies what parents need to do in order to make it safe for the child to return home, and what assistance will be given to them to help them achieve these changes. The Department will also be required to present a practical care plan to show how parental responsibility will be allocated while the

child is in care, and what kind of foster care or residential care placement will be sought.

- The Act allows for the possibility that parental responsibility will be shared between the parents and the Minister, allowing many parents to have a legal right to be involved in the life of their children, even if the children are in the long term care of the Minister. Parents will not be cut out of their children's lives entirely as happens under the existing law when a wardship order is made.
- Foster carers will be able to make more decisions about the day to day care of the child without being tied up in bureaucratic red tape.
- Parents seeking a rescission order will first have to show a change of circumstances before the Court may give leave for an application to be made.
- There will be a Children's Guardian who will have legal responsibility for making decisions about children and young people in the Minister's care, and will ensure that all children and young people in out-of-home care are properly looked after. The Guardian will be responsible for accrediting all agencies involved in placing children and young people in out-of-home care including the Department of Community Services. The Guardian will also set standards for reviews.
- Early intervention will be encouraged where there is serious conflict between parents and adolescents. Where it is not possible for adolescents to live at home any longer, Children's Court proceedings will focus on practical planning for the child or young person, and the family will be encouraged to develop an alternative parenting plan for the Court's approval.

The reforms to the law are wide-ranging, and this paper touches upon only a few of the changes brought about by the 1998 legislation.

2. The Process of the Review

The new *Children and Young Persons (Care and Protection) Act 1998* (the 1998 Act) is the end result of a long and thorough review of the *Children (Care and Protection) Act 1987* (the 1987 Act) which began half way through 1995. The review was managed on a day-to-day basis by a unit of three or four people in the Department of Community Services (DoCS), with myself as the Chair of the Review. Later Judy Cashmore joined us as the Deputy Chair.

The beginning of the review process involved identifying the problems in the child protection system as it was then operating. Some of the problems were glaringly obvious from the beginning, and some were discovered only as we discussed issues with a wide range of people involved in child protection in NSW. In the course of identifying problems and possible solutions, we had over 350 submissions, held forums around the state, met with numerous individuals, took phone calls and conducted working groups.

The 'discovery' part of the review took the best part of a year, after which we began to work on the solutions to the problems that we had discovered. Some of the solutions became fairly clear early on. Others did not. A Discussion Paper was prepared as a result of this process, setting out proposed solutions on some issues, and a range of options on other issues.

After the distribution of the Discussion Paper, we started to identify what would become our final recommendations as to the best solutions. We refined and further developed some of the proposals in the Discussion Paper and abandoned others. We spent days debating issue after issue, looking at what people said in their submissions, seeing what the consensus was, and working on solutions. Special working groups were convened on disability issues, children's services and children's employment. A separate working party was established on the Children's Court, hosted by the Senior Children's Court Magistrate, Mr Scarlett.

We regularly consulted an Advisory Reference Group which considered all the recommendations. On this Group, all the major Government Departments and the community sector were represented. It included a Children's Court magistrate and an experienced legal practitioner. The final report was then produced after consultation with the DoCS Director-General and a sub-committee of DoCS' senior executive.

There were many issues of detail which emerged in the course of the review. Three general issues led us to consider that it might be better to draft entirely new legislation which would better meet the needs of the child protection system in the 21st century.

Philosophy

The first problem was an absence of indications about what the child protection system was aiming to achieve. In the 1987 Act, there are no objects and principles or articulated values for the child protection system as a whole. It is an Act primarily about the Children's Court's role in child protection. The first real statement of principles appears in s.55, which is in a Part of the Act that describes what a Court should do when making decisions about the care and protection of children. Another example is the Aboriginal child placement principle, which is in s.87 of the Act. That section concerns what should happen with Aboriginal children once the Court has made a Care Order. It does not apply to all the other aboriginal children with whom DoCS was involved.

The 1987 Act is also very much focused on the *powers* of Government and not on the *responsibilities* of Government. While the 1987 Act empowers DoCS to remove children in situations of various kinds, there is not much about the responsibilities of Government for the protection of children.

Interagency co-ordination

There is little recognition in the 1987 Act about the need for interagency coordination in child protection. There are a couple of sections about police, one section about children in hospital if child protection concerns arise in the hospital setting, but beyond that, there is very little mention of other Departments or recognition of their role.

A fundamental problem in the child protection system is that in so many child protection cases, DoCS has the carriage and responsibility of the matter; but the answers or the resources which might provide the answers rest with another Department such as Health, Housing, or Education. The 1998 Act therefore aims to adopt an all-of-government approach to child protection in NSW.

Children's participation

The 1987 Act has a very formalistic approach to children's participation. It requires that if a child is over ten years of age, DoCS must give the child certain information in writing. As we considered the issue, we thought we could have a much more creative approach to the participation of children, whatever their age, without using a magic cut off age at which a child would be considered capable of participating in decisions about his or her care.

3. The goals for the new legislation

In very broad terms, we set out to develop a new Act with the following goals.

An Act about the child protection system

First, it had to be an Act about the child protection system, not an Act about the court system. We recommended that the Act should start at the beginning when we have concerns about the safety and wellbeing of children and go right through to what happens in substitute care and leaving care. It should set out some structures and values, looking at the whole system, not just the Court aspects of it.

An Act which educates

We wanted an Act which educates. It had to have the ability to be used in a way which educates people about their roles and responsibilities. The model here is the operation of the Children Act 1989 in England. That Act had a very positive impact on social work and child protection work in that country, because it had an educative role about good practice and was a catalyst for change.

The new Act in NSW can be used in a similar sort of way. The key features of the new legislation include an attempt to have clear principles and values at the beginning of the 1998 Act. The first part of the Act is really about objects, principles and statements of intent. They are crucial ones, in terms of a philosophy for child protection, recognising the cultural needs of children and the many other things found in the Objects and Principles.

The objects and principles can be put up on an overhead or be part of training manuals for new District Officers, Court staff and legal practitioners. Much of the 1998 Act has had that basic objective built into it.

An Act for a multicultural society

We wanted to have an Act for a multicultural society. The more that we focused on that issue as an objective the more we realised that actually there were principles which could be learned from ethnic minority cultures which were applicable to everyone in Australia such as the importance of the extended family and the importance of the cultural background whatever it may be. This was very important because in the past, child protection work has tended to be based upon the model of the nuclear family. We need to recognise in legislation the role of grandparents, aunts and uncles and the importance of cultural and linguistic issues in the lives of children and families.

An Act which allows an all-of-government approach

We wanted an Act which adopts an all-of-government approach. This was reflected in many of our recommendations. The Act makes it clear that other government departments have a responsibility for child protection and may be called upon to provide resources for children and families in need.

An Act which allows efficient deployment of resources

Nobody said that the new system must cost no more than the old, but it is an unwritten law that comes from Treasury. So we tried to be sensible. Essentially there was no point in proposing a grandiose scheme which would cost too much to implement. What we endeavoured to do was to find ways in which legislative reform might allow a more efficient allocation of resources.

There is a great deal of concern in some quarters about the costs of implementing the new Act. Certainly there will be additional costs in some areas. These are mainly in areas where the Act requires the Department and others to adhere to the basic requirements of good social work practice such as having proper reviews of children in out-of-home care. In other words, they are practices which should already be in place.

There will be additional costs, but I hope there will also be savings. I hope the new definitions, for example, will lead either to fewer notifications or fewer notifications which will have to be screened out. I do not believe that fewer notifications should be a public policy objective. Whenever a child needs protection, and the concerns are sufficient to warrant governmental intervention and support, then we should be encouraging people to report this. But we want to avoid unnecessary reporting, or reporting where the Department of Community Services has no proper role to play. So the new Act provides more specific definitions and endeavours to facilitate an interagency approach in responding to child protection concerns which avoids a duplication of investigation or response from different Departments or agencies.

An Act which encourages agreement where possible

We wanted an Act which encourages agreement with parents in finding solutions for their children's protection. We did not go down the English route where there is a great rhetoric of partnership. Partnership between parents and the social services works in many situations, but there are some parents with whom one cannot be partners. That is the reality of child protection work. There are many more parents though, where it is very important to try to keep them involved, and to try to work with them as best one can. We all know from extensive research in Australia and overseas, that most children in care eventually return home. So contact between children and young people in care and their family, and the family's involvement in decision making about the child should continue in most cases, even while the child is in care. If we can encourage agreement with parents about the way in which their child is protected, that is the optimal system.

An Act which allows the sharing of parental responsibility

We wanted an Act that encourages continued parental involvement, even after a Care Order is made. We recommended that wardship, which is an all or nothing concept, be abolished. Wardship takes parental responsibility from parents and gives it to the state. What the 1998 Act provides is a flexible approach in which the parents can

continue to remain involved with their children's care at least at some level even after the children have been removed. Parental responsibility for the child or young person in out-of-home care can be shared in all sorts of ways, and not only with parents. It can be shared by the grandparents or aunts and uncles. Even where children are being looked after in foster care on a long-term basis, it may still be possible to involve parents or relatives in major decisions, or to allow a parent to attend parent-teacher nights. The families of children in out-of-home care should not routinely be excluded from all responsibility for the children's welfare.

An Act which facilitates restoration and other permanency planning for children in care

We wanted an Act which requires proper planning for out-of-home care, including permanency planning where restoration is not realistically possible. Indeed, ensuring early permanency planning for children who were unlikely to return home was one of the principal objectives of these reforms. A range of different provisions in the 1998 Act were designed to ensure that cases were resolved as quickly as possible, especially where very young children are concerned, that the hard decisions were taken early about whether there is a realistic possibility of restoration, and that where restoration is to be attempted, it should be active, properly resourced and monitored.

The 1998 Act is very clear that there needs to be proper planning *before* going to the Children's Court to seek a care order, so that if the Court orders intervention, it is clear what the goal of that intervention is, and how parental responsibility will be allocated while the child is in care.

An Act which provides special protection for children in care

And finally, we wanted an Act which provides special protection for children in care. An important reform is the creation of a Children's Guardian who will exercise the parental responsibility of the Minister for all children in care, whether the foster care placement is organised by DoCS or by a non-government agency. The principle behind the allocation of parental responsibility for children in care is that those who are actually caring for the child on a continuing basis should have all the powers necessary to carry out their responsibilities, subject to the continuing role of the natural parents, the supervision of the agency and the overall authority of the Guardian.

4. Changes in the new legislation

The key features of the new legislation include an attempt to have clear principles and values there at the beginning of the 1998 Act. The first part of the Act is really about objects, principles and statements of intent. This includes principles about children's participation and the placement of Aboriginal and Torres Strait Islander children.

The children's participation principle could be one of the most revolutionary aspects of the 1998 Act. Children and young people ought to be involved, as best they can be, in terms of their age and understanding. This doesn't mean that one automatically adopts children's wishes. Respect for them as human beings is at the heart of the matter. Children need to know what is going on and that they have been heard.

(a) The best endeavours principle

The Act requires other government departments to use their best endeavours to meet requests made to it by the Department of Community Services in relation to a child protection concern. This does not mean that child protection cases go to the top of the queue nor that such requests automatically displace other needy people.

What is required is that the Department which receives such a request should do its best to meet it, and that it should do so within as quick a time as possible given the relative urgency of this case to other cases on the waiting list for services. It would be unlawful for the recipient Department to ignore the request or to place the case at the end of the queue without a proper assessment in good faith of its relative urgency in relation to other cases.

(b) Reporting risk of harm and responses to reports

Definitions

One of the concerns about the 1987 Act is that the definitions of abuse and neglect are quite broad. "Inadequate provision" is an example. There is a wide spectrum of inadequate provision for a child's care, from the minor to the serious, but all of such cases are caught up in the one definition.

The definitions in s. 10 of the 1987 Act fulfil a diverse range of roles:

- When someone may notify
- When someone must notify
- When emergency removal is justified
- When Court action should be taken.

The Review concluded that different definitions might usefully be adopted for different purposes. Consequently, in the 1998 Act, there are grounds for reporting, and grounds for Court orders in care proceedings. There is obviously some overlap between them, but they are not the same grounds. For example, it is a ground for a care application that parents acknowledge that they are unable to look after their child. This may be a parent with a psychiatric disorder or a drug addiction who has not yet abused or neglected their child. They may care about their child very deeply and look after him or her as best they can, and yet they accept that a care order is necessary. Under the grounds for care in the 1998 Act, a care application may be made without the need to allocate blame.

While grounds for reporting concerns about abuse or neglect ought to be drafted in broad enough terms to ensure that the child protection authorities are aware of children at risk, different considerations apply to care proceedings. The powers of the Children's Court to order intervention in the lives of families and, in some cases to order the removal of a child or young person from his or her parents should only be invoked where absolutely necessary. We considered therefore that the grounds for care proceedings ought to be drafted in such a way that the circumstances in which the court's powers may be exercised are clearly stated and no wider than is necessary to protect a child from serious harm.

Response to notifications

The 1987 Act prescribes that whenever there is a notification, DoCS is required to investigate. These provisions were written at a time when there were far fewer notifications. As notifications increased, this requirement to investigate led to increased pressure on DoCS' resources, which in turn meant that DoCS often did not accept some information about a child or young person as a "notification" within the meaning of the 1987 Act.

As not all cases are equally urgent, and not all cases necessitate the same kind of response, the 1998 Act allows room for DoCS to work out how best to respond to a given situation, including by investigating, providing services or referrals or merely monitoring the situation.

Emergency removals

Another issue with the 1987 Act was emergency removal. Because the 1987 Act was about child protection and therefore about work undertaken by DoCS, and because Apprehended Violence Orders (AVOs) are in the Crimes Act and about police work, there is little creative use of AVOs in child protection work. AVOs have not figured significantly in child protection practice because they were not in the Act which governed the work of DoCS. This is part of a larger problem that the institutional responses to domestic violence and child protection have been separated by being in different legislation and with responsibility being given to different organisations.

The use of AVOs as an alternative to emergency removal is included in the 1998 Act. The 1998 Act mandates people to consider whether to use the emergency removal powers to remove the child from the family or instead to get the police to obtain an AVO to remove the alleged perpetrator. The police have elaborate and effective systems for obtaining interim AVOs by telephone, if necessary, and the Act envisages that this system will be used to protect children wherever possible.

(c) Reforms to the Children's Court

Important changes will occur in the Children's Court. The practice of having list days in which large numbers of matters are brought before the court for brief mention will be abolished if the Act is implemented as intended. Instead, the first significant step in a court action should be a meeting with a Children's Registrar at which all the parties and their legal advisers will be present.

The Children's Registrar

The idea behind the reforms is that in all cases where a care application is filed, the Court will organise a preliminary conference. A legally trained officer, the Children's Registrar, will be the initial contact families have with the Court following the filing of a care application. In an informal, non-court room environment the Registrar will chair a preliminary conference to ascertain the matters on which the parties are able to agree, to clarify which issues are in dispute, and to determine the best way of resolving the disputed issues, referring the matter to alternative dispute resolution where appropriate, or setting a hearing timetable.

The conference ought to be organised on an appointment basis as soon as possible after the application is made. As the care application should be accompanied by all the

evidence upon which DoCS will rely to support its application, all parties should be aware of the orders being sought and the reasons why when they come to the preliminary conference. All parties should have access to legal advice prior to attending the conference and could have legal representation or other advocates assist them during the conference if they wish.

Children's Court Clinic

Another important reform to the Children's Court is the addition of a Children's Court Clinic. This addresses another problem with the Children's Court system as it works under the 1987 Act. It is important that experts providing reports on children and families following assessment should be seen to be entirely independent of DoCS. We considered that by attaching a Clinic of experts to the Court, it would be possible to ensure that the psychologists and psychiatrists used in care matters were independent and conducted their reports to the highest possible standard.

To assist the parties and the Court to reach the best outcome in care matters, the Children's Court Clinic can be used to conduct assessments of children and their families in those matters which require independent expertise. The Clinic will also ensure that assessments of children and their families are conducted to an acceptable standard.

ADR

Encouraging ADR at the early stages is also a feature of the 1998 Act. The Act does not mandate ADR, and nor is any particular form of ADR encouraged. Case conferences, family group conferences, conciliation, parent-adolescent mediation and many other structured processes may have their place. Eventually, it is hoped that these will become more and more part of the child protection system. It won't happen overnight when the Act is proclaimed, but it is hoped that over about five years, there will be widespread use of various forms of ADR.

The Act provides for the use of alternative dispute resolution at any point where it might reasonably assist in meeting the needs of children or young people and their families. It should be available:

- as an early intervention strategy;
- as an alternative to a care application; and
- during the course of a care application.

Over the past decade most jurisdictions have introduced some form of alternative dispute resolution either as an alternative to court proceedings or to complement care proceedings. The major advantage of alternative dispute resolution processes is their flexibility and accessibility to the parties. Formal court proceedings can be very intimidating for people. Children, young people, parents and other family members may feel more able to participate in a more informal process. They also have an opportunity to develop creative solutions to difficulties, have more control over the outcome and are more likely to be committed to a solution that they have contributed to. A well designed system of alternative dispute resolution is also likely to result in cost savings if care concerns can be resolved without the need for court hearings.

(d) Orders

The 1998 Act offers a very considerable range of orders. These include assessment orders, orders for supervision, accepting undertakings or allocating parental responsibility for a child or young person between the Minister, the parents and other suitable people. The Act also allows the Court to specify minimum levels of contact between the child and parents.

Assessment orders

One of the new options for the Children's Court is the making of an assessment order. This may be applied for independently of a care application and will often precede it. Indeed, one of the main reforms to care proceedings is that the rule which requires a care application to be lodged within three days of the removal of a child has been deleted. Instead, the Director-General will have the option of seeking an emergency protection order, an assessment order or filing a care application. There may of course be more than one such order sought.

Assessment orders will be useful in a range of situations, for example, where there is a disputed allegation of sexual abuse which has led to the emergency removal of the child, where there are issues about the capacity to parent of an intellectually disabled or psychiatrically ill mother, or where it is believed that a child is engaging in sexually abusive behaviours. A proper assessment early on may in some cases obviate the need for a care application.

Orders relating to parental responsibility

The Court may also now make an order allocating parental responsibility between the parents, the Minister and other suitable people. This order will dictate the parental responsibilities that are allocated to the Minister and those that the natural parents or other persons have. The responsibilities that may be allocated between these parties include residence, religious upbringing, education and training and medical decision-making. These responsibilities can be allocated to the parties to be exercised alone or jointly with other parties so as to make the best available arrangements for the care of the child or young person consistent with his or her best interests. In practice, it would be unusual for aspects of parental responsibility to remain solely with a parent. However, including the parents in major decisions where there is a realistic possibility of restoration to them is a means of encouraging parents to remain involved.

(e) Serious parent-adolescent conflict

Roughly one-third of all Children's Court cases involve adolescents where there has been an 'irretrievable breakdown' between them and their parents. The problem with the 1987 Act was that it was very unclear about why matters go to the Children's Court in these circumstances, and what practical difference court orders are likely to make. It is all very well making a young person a ward of the state, but what is really achieved by doing so? All the practical issues, such as housing, schooling and behaviour, remain. Most of these issues can and should be resolved without the need for court orders.

Irretrievable breakdown cases are really about resources, including the provision of housing, family counselling and mediation. How is the Court meant to respond to the very tragic situations where a complete breakdown has occurred between parents and

teenagers? The law cannot reconcile parents and children; what it can do is to provide a framework for a more adequate systemic response.

Consequently, the Review recommended that in any situation where the differences between the parent(s) or guardian and the child or young person are so serious that it is no longer possible for the child or young person to remain at home, the parent(s) or guardian, the child or young person or DoCS may seek appropriate orders from the Court. These orders will focus on practical issues, not issues of status such as wardship. An Alternative Parenting Plan will need to be developed which will set out the way in which the needs of the child or young person are proposed to be met having regard to the breakdown in the relationship between the child or young person and his or her parents, and may include proposals concerning the following:

- re-allocation of parental responsibility or specific aspects of parental responsibility,
- residential arrangements,
- supervision,
- contact arrangements,
- education and training,
- medical care,
- the provision of services.

(f) Out-of home care and the Children's Guardian

Major reforms have been made in the 1998 Act concerning how responsibility is allocated for children who are in out-of-home care. The Act creates three kinds of responsibility: care responsibility, supervisory responsibility, and the responsibilities of the Children's Guardian.

Care responsibility

Under the 1998 Act, an authorised carer of a child or young person (ie, a foster carer who is under the supervision of a designated agency) has the legal power to exercise the following day-to-day care powers:

- to consent to medical and dental treatment, not involving surgery, for the child or young person on the advice of a medical practitioner or dentist;
- to consent to medical and dental treatment involving surgery that a medical practitioner or dentist certifies in writing needs to be carried out as a matter of urgency in the best interests of the child or young person;
- to correct and manage the behaviour of the child or young person;
- to give permission to participate in activities, such as school excursions, that are organised for the child or young person;
- to make other decisions that are required in the day-to-day care and control of the child or young person.

The 1998 Act provides also that authorised carers may be given greater responsibilities than those contained in care responsibility, since aspects of the Minister's parental responsibility may be delegated to the carer in accordance with the Act. Delegated powers from the Children's Guardian can include the power to give consent to medical and dental treatment involving surgery, other than urgent treatment, and the power to make decisions concerning the education and training of the child or young person.

The supervisory agency

The role of the designated agency is to supervise the placement, and for this purpose, the Children's Guardian will delegate to the designated agency most of those aspects of parental responsibility which do not vest in the authorised carer. These functions could include the following:

- the power to place a child or young person with an authorised carer or in a residential unit,
- the power to make decisions on matters relating to the safety, welfare and well-being of a child or young person that are not encompassed in the care responsibility,
- the power to control the exercise of the care responsibility by giving directions to authorised carers,
- the duty to supervise the placement and to ensure that the safety, welfare and well-being of the child or young person is being protected and promoted.

The Children's Guardian

The new Children's Guardian will exercise the parental responsibility for all children in state care on behalf of the Minister, where a court has allocated parental responsibility to the Minister. The Children's Guardian's role is ultimately a legal one. All aspects of parental responsibility which are vested in the Minister are to be exercised on the Minister's behalf by the Guardian, and the Guardian acts as the person who ultimately has responsibility under the Minister to ensure that children and young people who are in state care are looked after as well as the circumstances allow.

The Guardian is responsible under the Act for all children in the care of the Minister, whether they are in departmental or non-departmental care.

(g) Disability issues

We also considered disability issues, in particular the interface between disability and the child protection system. It emerged that there was a legislative issue particularly in terms of voluntary care of disabled children. Some children and young people with disability are placed in voluntary care by their families who remain devoted, concerned and involved. In such situations where there is a voluntary placement with the non-government sector that is working well, there is no reason why anybody should be concerned or be involved as everything is working fine, and this child is being adequately cared for.

But, there are other situations where the child or children have been placed in voluntary care where the parents have disappeared from the scene and there is nobody who is really exercising parental responsibility for those children. The main issue we grappled with in a special working party on these issues was to see whether we could create a better system for ensuring that these children would be properly looked after.

The new Act requires notifications of voluntary care arrangements lasting 21 days or more to ensure that proper case planning occurs for these children.

(h) Compulsory assistance

There has been much misunderstanding about compulsory assistance orders. The Act gives effect to the Review's recommendation for a last resort strategy with children and young people at serious risk of suicide or other very serious harm. The Review called these "protective supervision" orders. The government preferred the term "compulsory assistance".

Section 123 defines compulsory assistance of a child or young person as "a form of intensive care and support for the child or young person that is necessary to protect the child or young person from suicide or other life-threatening or serious self-destructive behaviour." The orders may only be made to support a therapeutic program which will address the issues which have led to the application being made. Compulsory assistance orders are likely to be applied for in only about 20 cases per year.

Compulsory assistance orders do not permit the child or young person to be detained. There is no authority to place the child or young person in secure care nor in any place with locks or bars. The only element of restriction is that the child or young person be in a place where there is 24 hour supervision and that the police or departmental staff be able to return him or her to the program without any other lawful authority being required. The order is sufficient. Compulsory assistance orders are surrounded by a large number of safeguards.

5. Conclusion

This paper has examined only a few of the features of the new Ac. The Act offers many possibilities for improved ways of resolving the difficult issues involved in child protection cases. It will require all those involved to leave behind old practices to the extent required by the Act. It is not a good idea to put new wine in old bottles. In the same way, the success of the Act will depend on the willingness of all involved to embrace its spirit, and to work through the numerous difficulties and teething problems which will inevitably affect the first few months of its operation.