

Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.

**CONTRASTING APPROACHES TO
MANDATORY REPORTING IN NEW
ZEALAND AND THE NORTHERN
TERRITORY OF AUSTRALIA
- A COMPARATIVE STUDY**

A thesis presented in partial fulfillment of
the requirements for the degree of
Master of Philosophy

The School of Sociology, Social Policy and Social Work
Massey University
Palmerston North, New Zealand

Alistair Colin Knox Munro

2005

TABLE OF CONTENTS

	Page
Preliminaries	
Abstract	iii
Acknowledgements	iv
Preface	v
Glossary of Terms and abbreviations	vi
Section One	
Introduction, Methodology, and Literature Review	
Chapter 1 Introduction	1
Chapter 2 The Debate over Mandatory Reporting: Literature Review	9
Chapter 3 The Documentary Method and the Comparative Research Tradition	30
Section Two	
Jurisdictional Studies	
Chapter 4 The Northern Territory - The Genesis of a Policy	48
Chapter 5 The Northern Territory - The Impact of the Death of Dean Long	63
Chapter 6 The Northern Territory - The Legislative Progress of the Amendment <i>Bill</i>	79

Chapter 7	New Zealand - Mandatory Reporting in New Zealand: The Mason Committee	93
Chapter 8	New Zealand - Policy Formation in Response to the Mason Committee Recommendation on Mandatory Reporting	108
Chapter 9	New Zealand - Introduction of the Amendment <i>Bill</i> , the Select Committee Debate, and the Legislative Aftermath.	128
Chapter 10	Comparison and Conclusions	151
	Bibliography	163
	Appendix	175

ABSTRACT

Responding to increasing societal concern about child abuse by implementing a system for mandatory reporting of suspected abuse occurred in a number of countries since the 1960s. By 1967 in the United States, all states had adopted some form of mandatory reporting and in Australia five states had mandatory reporting by 1982. Other nations, such as the United Kingdom and New Zealand, never legislated in this way and have retained voluntary reporting systems. This study asks why one jurisdiction adopted mandatory reporting and another decided not to, by comparing the history of mandatory reporting policy in the Northern Territory of Australia, which adopted mandatory reporting in 1982, and New Zealand, which rejected that option in 1994. By examining events leading up to the mandatory reporting debates in each jurisdiction, the policy advice provided to each Government beforehand, and the parliamentary fate of the respective proposals, an understanding of what shaped the policy outcome in each is obtained. Particular attention is given to processes of policy formation and the use made of research in developing the advice tendered to each Government. A distinction is drawn between policy-formation and policy-making, the latter being seen as the province of legislators since they finally determine which, from a range of policy options, shall prevail. The study asks what advice did the policy-makers seek and how far they were guided by that advice. The range of standard arguments for and against mandatory reporting is assembled, to determine which, if any, were decisive in the final outcomes. It is concluded that in each jurisdiction, the niceties of policy analysis gave way at the parliamentary level to more determinative political considerations. However, in the case of New Zealand, research-based policy advice was more influential, possibly because of the existence of stronger consultative processes, greater awareness on the part of legislators of alternatives to mandatory reporting, a more critical approach to the assumptions of mandatory reporting, and a determination on the part of the Government that the issue be openly debated.

ACKNOWLEDGEMENTS

I wish to thank all those who have assisted me with the location and provision of material for this study, in particular, officials of the Records Department of Northern Territory Health in Darwin, Northern Territory, the Ministry of Social Development Information Centre in Wellington, New Zealand, and Parliamentary Librarians in Darwin and Wellington. Their kind assistance was invaluable.

I am also grateful to have been granted permission to undertake research into Governmental archives in the Northern Territory and New Zealand and would be gratified if the study proved of interest to members of their policy communities.

To those who have borne with this study as I moved between numerous countries and work situations and underwent significant changes in personal circumstances along the way, in particular my Supervisors and Family, I also express my gratitude.

PREFACE

The writer began his social work career when mandatory reporting was beginning to be debated in New Zealand. He then worked as a child protection social worker and social work supervisor in the New Zealand child protection system during the introduction of the ground-breaking *Children, Young Persons, and Their Families Act 1989*. He was also involved in training social workers and community members in the principles and procedures of the new legislation. Later he observed setting up of the Mason Committee to review the implementation of that Act and its subsequent recommendation, not followed by the New Zealand Parliament, that mandatory reporting be adopted.

More recently, the writer acquired practitioner-level and supervisory experience of statutory child protection under a mandatory reporting regime as an employee of Territory Health Services which administers the relevant legislation and provides family welfare and child protection services in the Northern Territory of Australia.

For the writer it has been instructive professionally to have the experience of working under both voluntary and mandatory reporting regimens. The consequent experience has stimulated a strong interest in researching the clash of policy principles and practice issues represented by these two systems. It has also served to bring alive the research literature in the field.

It is hoped that making the Northern Territory and New Zealand policy history of mandatory reporting accessible in a comparative framework may be useful to future policy analysts required to consider the merits of mandatory reporting as a means of reducing the incidence of child abuse.

GLOSSARY OF TERMS AND ABBREVIATIONS

TERMS

Child Abuse :	Generally, the physical, emotional or sexual maltreatment, or neglect, of a child or young person. The precise meaning of the term will depend on the applicable legal definition in a particular jurisdiction.
Hapu :	Sub-tribal unit (Maori)
Hansard:	Generic term for the record of Parliamentary proceedings in Westminster jurisdictions
Hui :	Meeting/consultation (Maori)
Iwi :	Tribal unit (Maori)
Mandatory Reporting:	Requirement established in law placing an obligation on a defined class of persons to report suspected child maltreatment to an agency recognised in statute.
Marae :	Site of meeting house (Maori)
Pakeha :	Non-indigenous New Zealander of European ethnicity
Royal New Zealand Plunket Society (Inc.):	Provider of well child and family health services (Founded 1907)
Whanau :	Extended-family unit (Maori)

ABBREVIATIONS

ALRC:	Australian Law Reform Commission
CYPF Act:	Children, Young Persons and Their Families Act 1989 (NZ).
DCD:	Department of Community Development (NT)
DoH:	Department of Health(NT)
NT:	Northern Territory
NTDCD:	Northern Territory Department of Community Development
NTPR:	Northern Territory Parliamentary Record
NTLA:	Northern Territory Legislative Assembly
DSW:	Department of Social Welfare (New Zealand)
NZP:	New Zealand Parliament
SPA:	Social Policy Agency (NZ)
PD:	Parliamentary Debates (NZ)

CHAPTER 1

INTRODUCTION

This is a study of the gestation and birth of social policy in two jurisdictions, New Zealand and the Northern Territory of Australia. It focuses on the formation of state policy to follow-up cases of abuse and neglect of children and in particular, the reporting measures required in society. In both jurisdictions policy proposals for making reporting of abuse mandatory were promoted and legislatively debated, but the approaches taken and the final outcomes differed markedly.

In 1982 the Northern Territory of Australia introduced mandatory reporting of alleged child maltreatment by an amendment to the existing *Child Welfare Act* by which every citizen became required by law to report suspicions of child abuse and neglect. By contrast, a decade later in New Zealand, Parliament declined to follow the recommendation of the 1992 Ministerial Review Committee (the Mason Committee) that mandatory reporting provisions should be incorporated in the New Zealand child protection law. A modified voluntary reporting system was retained instead. Examination of the background to these contrasting social policy outcomes may throw light upon political processes influencing social policy formation.

This is primarily an historical study based upon archival research and employs documentary research methods. The study also draws upon the comparative tradition in social policy research. It records and compares the origin and fate of mandatory reporting proposals in the two jurisdictions. By focusing on historical events which eventually led to the adoption in each of their respective legislative positions, it seeks to explain these. It asks such questions as: What views on mandatory reporting were current and what processes were followed to arrive at final policy positions? What advice did the politicians as ultimate policy-makers seek? How far were they guided by that advice and to what extent was it informed by relevant research evidence? Were the Parliamentary Debates decisive or merely the formalisation of pre-determined political decisions.¹

¹ See Page 12 for the formal list of research questions of this study.

Policy-formation and policy-making

The policy process by which policies are initiated, formulated, implemented, evaluated and reviewed has been studied extensively by scholars.² This study focuses primarily upon the first two of these stages: policy initiation and policy formulation. Social policies are, among other things, constructed to address social problems. Underlying this case study is a model of policy formation in which undesirable actions or outcomes noticed in society come to be constructed through social pressures, advocacy and moral protest, into a 'social problem'. It comes to be generally assumed that remedial action led by state authorities, is possible. Arrangements are made to study the problem and for solutions or policy options to be generated.

During such processes there is a contest informed by various values, cultures, vested interests, and ideological positions as to how the problem should be understood and what solutions best fit different constructions of the issue. Finally, through a process of political influence, bargaining and compromise, one such definition of the problem and its solution may emerge as paramount. This 'solution' may be enunciated by a Cabinet decision, by simple bureaucratic fiat, or it may have emerged at the end of a parliamentary process issuing in a new law. It might represent a consensus achieved through widespread consultation. Research based on independent scholarship, politically directed policy analysis and advice, and the power of politicians to decide can all play into this complex dynamic.

The final stage of social policy formation is frequently a legislative process. Before policy is enshrined in law and capable of being implemented by Government-mandated bodies, a social policy may be just a set of ideas or programmes on paper or in the minds of analysts, advisors or activists. To be accepted, any major social policy proposal must run the gamut of parliamentary procedure and be subject to the scrutiny and challenges of that process. Importantly, in a democracy politicians are the final arbiters and makers of social policy.

However, it is also important to recognize that policy is not only or always formulated as a technical and rational exercise in problem resolution. In addition to its functional

² Ellwood, David T. (2003); Hague, Rod and Harrop, Martin (2004); Fischer, Frank (2003).

aspect policy can also serve symbolic or rhetorical purposes in society as an expression of fundamental values, a statement of moral position, or as a way of convincing the public that something is being done about a problem, whether or not that is in fact the case. As Parsons (1995) explains:

*Policies may succeed at the symbolic, reassurance level but fail in practice ... Policy-making therefore may be viewed from this perspective as the manipulation of symbols ... or the manufacture/construction of 'spectacle'...*³

From this point of view, 'Public policy is about 'doing something' rather than problem-solving'.⁴ Both the technical-instrumental and the symbolic-rhetorical aspects of policy, and the tensions between them, are illustrated in the Northern Territory and New Zealand decision-making processes studied here.

Assumptions of the study

A major assumption of this study has been that there is a justified place for historical study in social policy research and that an examination of the political and procedural influences at parliamentary level on the fate of a particular policy proposal is likely to be instructive. A further assumption has been that the child protection systems and legal frameworks in New Zealand and the Northern Territory were sufficiently similar to justify comparison in the terms conducted in this study. It is assumed that there is a basic commensurability between the jurisdictions in what is meant by 'child protection' and 'mandatory reporting', and how the possibilities of remedial action under law are understood. The next section examines key issues on how Governments deal with child abuse by establishing various systems for reporting it.

Child abuse and models of reporting

The phenomenon of child abuse is now acknowledged internationally to be a serious social issue. How to deal with it is the subject of much publicity, debate and enquiry.⁵ In the spectrum of approaches to this social problem there appear two fundamentally different policy directions. The first places stress on strengthening families and communities, increasing the levels of services to children and their caregivers, alleviating child poverty and other social ills often associated with child neglect and abuse. Only as an intervention of last resort does it provide for forensic

³ Parsons (1995: 181).

⁴ Ibid.

⁵ Finkelhor, David(1988); Gilbert, Neil (1997);Nelson, Barbara J.(1984); Parton Nigel (1985).

investigation of incidents of alleged child maltreatment. At the other end of the spectrum is the policy approach that places priority on investigating allegations first and then providing support services, if proven necessary.⁶

The problem of child maltreatment is complex and difficult for governments to deal with. As the authors of a recent study of evidence and options on mandatory reporting of alleged abuse comment:

*Deciding on the most appropriate social policy response to the problem of child maltreatment is fraught, complex and sensitive ... an elaborate network of agencies and personnel struggles on a daily basis with this complexity in an environment of public and media scrutiny, high community emotion and professional vulnerability and child and family distress. The literature on child abuse and mandatory reporting is considerable and decidedly inconclusive about most matters apart from the fact that there is indeed an internationally present problem, the solution of which defies easy or uniform solutions.*⁷

Reporting Systems

Central to official measures to limit child abuse in any nation or State is the creation of a reporting system. Jurisdictions differ in their approach to this requirement. Frequently, the reporting mandate is underpinned by legal provisions, but not always. A continuum of measures can be identified, ranging from a strictly forensic/investigative model with universal compulsion to report, at one end, to a system with no reporting mandates which relies upon kin and community relationships to protect children, with intervention determined by family need, and the community response capacity, at the other extreme.⁸ At the family strengthening and community capacity-building end of the scale, reporting models emphasize self-regulation and community governance, rather than the state control, criminal sanctions and legislative mandates characteristic of the more forensic models. Nevertheless, both approaches to the reduction of child maltreatment, as well as models intermediate between them, inevitably depend for their successful functioning on reports being made to investigating authorities, whether voluntarily or as matter of legal duty, and require some lawful basis for the investigation of such reports.

⁶ Harries M., Clare M. et. al. *Mandatory Reporting of Child Abuse: Evidence and Options*. Report by the Discipline of Social Work and Social Policy, University of Western Australia for the Western Australian Child Protection Council, July 2002.

⁷ Ibid: 9.

⁸ Harries and Clare (2002: 51).

What stimulated this research?

To the student of social policy interested in child welfare the ways in which different jurisdictions have historically adopted differing reporting regimes invites exploration and explanation. Is it possible to understand in detail how different policy outcomes came about? Having worked as a social worker in both New Zealand and the Northern Territory of Australia, the topic has been of interest to me for three main reasons. In the first place was the historical question at the basis of this study: it was inherently interesting to ascertain just how it came about that New Zealand rejected mandatory reporting whereas the Northern Territory adopted it. What underlay these opposite policy outcomes?

Secondly, the comparative analysis of public policy formation may help to illuminate policy and practice issues at the heart of the tension between the mandatory and voluntary approaches to the reporting of child maltreatment internationally. That is to understand what is really at issue between these two policy approaches.

Finally, there might be lessons to guide persons required to give advice on, or seeking to influence, future attempts to initiate mandatory child abuse reporting regimes. Access to the detailed history of earlier policy processes may provide insights for future policy analysts.

The Research Questions

On the basis of the documentary records, the specific research questions of this study are as follows:

- (i) What processes and considerations led each of the Governments involved to adopt its final position on mandatory reporting as embodied in legislation?
- (ii) What research was undertaken and advice given in each jurisdiction to inform the final political debate on mandatory reporting and how far did it influence the outcome?
- (iii) To what extent were the respective legislative debates decisive in determining the policy outcomes and how far did they reveal the underlying policy formation processes?

- (iv) How might the eventual adoption of different policy approaches in the two jurisdictions be explained?

The next section sets out how these questions are addressed in this study.

Thesis Format: Chapters two to ten

The specific research questions of this study have been detailed above. Chapter two introduces the debate over mandatory reporting as a policy instrument to reduce child abuse. There is a focus on arguments about the effectiveness and efficiency of mandatory reporting as a policy option designed to protect children from maltreatment. Models presented in the literature as ways of conceptualizing abuse and the systems for reporting it are discussed. The conclusion is reached that although the evidence for the efficiency and effectiveness of the policy is not strong, rational arguments based on these criteria and on research findings are not the only decisive factors leading to the advocacy of mandatory reporting. In particular, critical incidents such as child deaths and the powerful social symbolism of mandatory reporting can also be highly influential in the policy debate.

In Chapter three, attention is given to methodological questions and the research traditions on which this study is based: documentary or archival research and comparative policy research. The possibilities and limitations of each tradition as well as certain problems and issues arising within them are discussed and an attempt made to relate features of each tradition to the current study. The study is technically characterized in terms of the traditions as a qualitative, historically-oriented, comparative-descriptive, focused study. A narrative approach to policy studies is adopted.

The next six chapters form the heart of the historical study. They trace the processes of policy formation and debate in each jurisdiction in the periods under examination. Chapters four to six provide an account of the history of the policy process affecting mandatory reporting of alleged child abuse in the Northern Territory, principally focusing on the years 1982-1983 and drawn from published documents and internal Departmental files. Chapters seven to nine provide the corresponding New Zealand history from the following decade.

Chapter four gives the background of welfare reform in the work of the Martin Committee and the development of child protection systems in the Northern Territory. Also mentioned are the policy discussions about mandatory reporting in the policy formulation work undertaken in the years leading up to planned reform legislation eventually introduced and passed into law in 1983. Inter-departmental debates and conflicting advice to respective Ministers on mandatory reporting are recounted. In Chapter five the decisive role of the tragic death of the abused child Dean Long in 1981 is described. It is shown how the resultant publicity stimulated a sense of political urgency. And how, contrary to some Departmental advice, this induced a rapid and determined governmental response to introduce mandatory reporting by special amendment to existing legislation in advance of a long-awaited omnibus child welfare reform measure.

Chapter six analyzes the debates on the *Child Welfare Amendment Bill* in the Northern Territory Legislative Assembly, leading to the eventual adoption of mandatory reporting in June 1982, details the arguments used and attempts to account for the speed and unanimity of the Northern Territory Legislature as well as the apparent lack of depth in the debate.

Chapter seven, the first of the chapters treating the mandatory reporting debate in New Zealand, gives the historical background to the setting up in 1992 of the Mason Committee to review the implementation of the *Children, Young Persons and Their Families Act 1989*, and the Committee's recommendation that mandatory reporting be introduced in New Zealand. Chapter eight surveys the detailed policy response of the New Zealand Government to this recommendation. It analyzes the work of the inter-departmental policy advice research programme established within the Social Policy Agency of the Department of Social Welfare to advise Government on the issue of mandatory reporting. The political pre-emption of the work of this policy advice group and the decision to proceed to parliamentary consideration of an *Amendment Bill* proposing the introduction of mandatory reporting is examined.

The final chapter of the New Zealand sequence, Chapter nine, provides an account of the parliamentary fate of this *Amendment Bill*. This includes scrutiny of the *Amendment Bill* by a Select Committee which removed the provision for mandatory reporting and replaced it with an alternative approach to child abuse prevention based on professional and public education and inter-agency protocols. Analysis is

also made of the subsequent parliamentary debates which upheld this recommendation.

Chapter ten concludes this study with a comparative analysis of the policy formation and decision-making processes in the Northern Territory and New Zealand. An attempt is made to account for both the differences of approach and in final outcome in terms of key features of the respective jurisdictions. In particular, attention is drawn to the difference in consultative processes, a greater awareness on the part of legislators in New Zealand of alternatives to mandatory reporting, and a more critical approach in New Zealand to the implicit assumptions of mandatory reporting. It also notes the Government's commendably unprejudiced determination that the proposal that mandatory reporting become part of New Zealand law should be openly debated and the available evidence both for and against mandatory reporting objectively considered. Implications for possible future policy debates on mandatory reporting are considered.

Conclusion

It is hoped that this historical study will be of interest and relevance not only to those who are familiar with the New Zealand and the Northern Territory child protection systems, but also to anyone interested in problems of social policy formation in general and child abuse reporting policy in particular. Comparative historical study, the finding of similarities of and differences and achieving greater understanding by viewing one system or series of events through the 'lens' of another system or set of occurrences is, in the writer's opinion, an indispensable method in social research. We come to understand ourselves better by standing however briefly and vicariously in others' shoes, viewing the world from their perspective and in light of their historical experience. On this basis, we may evaluate more richly and concretely the assumptions in the conclusion reached by Hewitt and Robb (1992), who wrote:

*Each country or state within a country (develops) a unique system of child protection ... the most important factor in determining the nature of the reporting system is the people with political or decision-making influence in that society and what they believe in.*⁹

⁹ Hewitt and Robb (1992: 62).

CHAPTER TWO

THE DEBATE OVER MANDATORY REPORTING

INTRODUCTION

This study traces how two governments developed their respective policy positions on the reporting of child maltreatment and whether such reporting should be mandatory. The processes and considerations leading each Government to its final position on mandatory reporting are examined. To assess its influence on the outcome, this includes an investigation of the research undertaken and advice given in each jurisdiction to inform the final political debate on mandatory reporting. This chapter reviews some of the chief arguments and issues in the debate on mandatory reporting of alleged child maltreatment. This will attune us to some of the complexities which, objectively, legislators seeking to be informed by the relevant research literature would be required to address.

Whatever use made of it in the actual decision-making, evidence on central arguments concerning advantages and disadvantages of mandatory child abuse reporting was available to policy-makers and their advisors in both jurisdictions. In particular, there were two key documents, one of which, the Australian Law Reform Commission Discussion Paper No. 12 'Child Welfare'¹⁰ informed both the New Zealand and the earlier Northern Territory debate. The other key document was a literature review specifically commissioned by the Department of Social Welfare to inform the New Zealand debate on the merits or otherwise of mandatory reporting.¹¹ Further consideration is given to these documents later in this chapter which also surveys key issues in the wider literature on child abuse reporting in order to give a necessary basis for understanding what was at stake, explicitly or implicitly, in the policy-formation processes in the Northern Territory and in New Zealand.

Key issues which policy-makers had to face are highlighted in the research literature. These included whether mandatory reporting reduces the incidence of abuse and re-abuse and the incidence of child murder, whether mandatory reporting clearly identifies its target group, whether it draws large number of unsubstantiated cases into the protective system, and the problems inherent in assessing the costs and benefits of mandatory reporting.

¹⁰ ALRC (1981) *Report on Child Welfare*, No. 18, AGPS, Canberra.

¹¹ Hewitt and Robb (1992).

Furthermore, in both debates assumptions were made about the effectiveness and efficiency of mandatory reporting. Therefore, this chapter also outlines the chief assumptions of the mandatory reporting option showing what it would mean to evaluate mandatory reporting in terms of criteria of effectiveness and efficiency.

Such a general survey of the literature on mandatory reporting provides a background for evaluating the use made of available research evidence by policy-makers in the Northern Territory and in New Zealand, and for identifying critical factors in their respective policy decisions. Further, such an overview may provide useful material for future policy analysts when new debates arise on the merits of mandatory versus voluntary systems for reporting child abuse.

It should be mentioned, on a methodological note, that the research literature surveyed here highlights persistent issues and problems with mandatory reporting which both pre-dates and post-dates the periods in the late twentieth century when the Northern Territory and New Zealand Governments legislatively considered this policy option. The justification for this approach is that whilst later work and publications may have solidified the research findings, the main themes and dilemmas of the policy were already well-discussed in the research literature by the early 1980s.¹² At the same time it needs to be acknowledged that there was far more research to hand by the time New Zealand legislators tackled the mandatory reporting issue in the early 1990s than could have been accessed by legislators in the Northern Territory or their policy advisors.

The contest over mandatory reporting

The academic literature on the subject of the mandatory reporting of child maltreatment or abuse is conflicted and extensive. It shows clearly that the question of mandatory reporting is a highly contested one characterized by strongly held points of view. The New Zealand author Lesley Max, stressing the symbolic-rhetorical function of policy, wrote in 1993 that:

The introduction of mandatory reporting would make an unequivocal statement that society abhors and will not tolerate the abuse or neglect of children. This unequivocal statement is an essential

¹² See, for example, Sussman, Alan (1974); Sawyer and Maney (1981); Carter et. al. (1988).

*underpinning for all related educational, supporting and therapeutic efforts.*¹³

In the same year, also in New Zealand Professors Jane and James Ritchie had claimed that 'No civilized society should be without mandatory systems to detect and deal with child abuse and neglect'.¹⁴ Meanwhile, some years earlier in Australia, Carter (1988) had warned about the problems inherent in compulsory systems:

*The most compelling argument in favour of mandatory reporting is its symbolic value. It signals to the community through legislation that the State means business when it comes to the protection of children. Unfortunately symbolism, whilst important is not enough. Much more needs to be done than simply passing legislation mandating the reporting of abuse. Indeed, it is clear from other jurisdictions that passing mandatory reporting laws is not a solution, just the beginning of a new set of problems.*¹⁵

The extensiveness of the academic literature on mandatory reporting can be illustrated by reference to both New Zealand and Australian surveys. As mentioned above, a key document drawn upon in the New Zealand Parliamentary debate was a literature review and analysis of mandatory reporting prepared for the Department of Social Welfare.¹⁶ This document contained one hundred items by 89 different authors spanning the years 1979-1992 with contributions from the fields of medicine, law, psychology, social work and policy studies as well as abstracts of official welfare statistics and entries drawn from legislative debates. Similarly, the bibliography of the Australian monograph which Jan Carter wrote with others in 1988 on mandatory reporting and child abuse contained 146 entries by 111 authors with the earliest entry dating from the 1940's.¹⁷ The material referred to in both bibliographical compilations is drawn from across the English-speaking world with the majority of the material originating in North American publications. In both these reviews the preponderance of entries date from the 1980s reflecting to a major extent the prominence of the issue of child abuse and reporting systems at that time.

Issues in the design of child protection systems

The literature makes clear that designing any system aimed at reducing child maltreatment demands attention to a number of prior questions. These include how

¹³ Lesley Max for Child Protection Trust Advocacy Committee, New Zealand (1993).

¹⁴ Ritchie, Jane and James (1993).

¹⁵ Carter, J. et. al. (1988).

¹⁶ Hewitt and Robb (1992).

¹⁷ Carter, J. et. al.(1988)

child abuse is understood or legally defined in a particular jurisdiction, what reporting and management systems can be set-up to deal with it, and what they are intended to achieve. Aims may include punishment, prevention, or therapy or a mixture of these. In addition, different theoretical models may underpin the policy debate; for example, a medico-legal model, a community-responsibility model, or a family-empowerment model. Questions also arise with regard to ethical and human rights issues surrounding the reporting and management of child maltreatment, legal issues over what is 'in the best interests of the child', and policy issues over how reporting of child abuse may be affected by connections between child poverty and child neglect.

The questions of most direct concern to policy-makers are how effective and efficient are proposed reporting systems in achieving their presumptive ends of preventing or minimizing abuse, what are the rates of reporting and of substantiation of maltreatment under various reporting regimes, and what are both the intended and unforeseen consequences of mandatory systems for reporting child abuse. Awareness of the research literature on all these issues must underpin any attempt to draw conclusions about what needs to be taken into account by policy-makers when debating proposals to introduce mandatory reporting of child maltreatment.

Alternative models of for dealing with child abuse

It has been held that in deciding between voluntary or mandatory reporting systems policy-makers will be influenced by the model of child abuse causation adopted.¹⁸ The contest between proponents of such models was a feature of the policy debate in the jurisdictions studied here. In the *medical model* of child abuse causation, also termed the psychiatric or disease model, the roots of child abuse are seen to relate to causes arising within the pathology or personal history of the offending parent for whom treatment is required to prevent further abuse.

In the *social situational model* emphasis is placed upon the dynamics of interaction between the parties to the abuse – perpetrator, victim and non-abusive members of the family system – and upon the interaction patterns within that system. Aspects of the victim's behaviour may be held to trigger or incite the abuse. The focus is on communication and interaction patterns within the family system. The aim of intervention in this model is the empowerment of the family to care for its members

¹⁸ See Mendes(1996) upon which the following discussion relies.

by altering, for example, the abusive patterns of interaction and communication through counseling or family therapy.

The *structural model* places the accent on sociological causes. Here the occurrence of abuse is attributed to stressors arising from conditions and events in the family's social environment and structural factors in society such as poverty, unemployment, social isolation. Cultural norms of violence, institutionalized gender relations and power imbalances in this model also serve to explain the origins of abusive behaviour. Proposed remediation comes in the form of increased support and material input into the family in order to alleviate those conditions which are seen to give rise to the abuse including measures to alter structured power imbalances. Efforts are made to reintegrate the family into community networks and support structures, which may be kin-based.

Models have also been developed which attempt to explain why some jurisdictions adopt one reporting model for child abuse management and reporting when other jurisdictions choose different approaches. Parton (1979) for example, identified three ideologies or global frameworks operative in the field of child abuse: penal, medical and welfare or humanistic. These three frameworks are seen to generate quite different approaches or systems for the management of abuse. The respective frameworks reflect whether the focus is on the act of abuse and on establishing guilt (legal); on disease processes and treatment (medical); on the family system, safety and rehabilitation (traditional humanistic); or lastly, on social processes, change, justice and redistribution (radical humanistic).¹⁹

Linking models of causation and reporting policy

Advocates of the medical model often strongly support a policy of mandatory reporting:

*They point to evidence associating child abusers with a history of abuse/and or rejection in childhood; low self esteem; a rigid, domineering and impulsive personality; a record of inadequate coping behaviour; poor interpersonal relationships; high unrealistic expectations of children; and lack of ability to empathise with children. They do not view the tackling of structural inequalities as central to addressing child abuse.*²⁰

¹⁹

Parton (1979)

²⁰

Mendes (1996: 26).

However, any notion of a causal relationship between adherence to the medical model and advocacy of mandatory reporting is belied by the fact that opposition to mandatory reporting on grounds of medical ethics and the privilege of patient-physician confidentiality leads some doctors to be adamantly opposed to mandatory reporting.²¹ As will appear below this professional resistance is something that policy-makers in both jurisdictions had to address.

Some promoters of the sociological model might concede the necessity for a policy of mandatory reporting under certain circumstances out of a pragmatic belief that it will ensure better child safety in particular cases, despite the fact that mandatory reporting does not address broader factors seen as causative of abuse. Although the literature surveyed is not by any means conclusive on causation it does raise questions about what is indigenous to a particular Child Protection system, and what theories of causation and remediation are embedded in its child protection ideology, culture, values and history. Further, it does not explain how otherwise similar child protection systems may adopt quite differing policy stances on the issues of mandatory reporting. That is a matter for case by case historical examination.

Argumentation concerning mandatory reporting

It is evident from the literature not only that the entire subject of mandatory reporting is highly contentious but also that the links between arguments and evidence are, at times, tenuous. As Harries and Clare et. al. have written, 'there are conflicting views on almost every aspect of mandatory reporting from the need for its introduction to its impacts'.²² They also point out that 'many of the arguments are polemical and most of the 'evidence' is inferential and presumptive'.²³ Before the arguments are considered in more detail however, it is important to consider two other matters: the assumptions contained in the mandatory reporting option and the major problem of how to assess the costs and benefits of mandatory reporting. Both are relevant to policy-making in this field.

Assumptions of mandatory reporting

It has often been recognized that any social policy proposal is based upon a number of values and assumptions which may be political, economic or cultural.²⁴ The policy

²¹ Ibid.

²² Harries and Clare et. al. (2002: 29).

²³ Harries and Clare et. al. (2002: 31).

²⁴ Carter (1988: 2).

debates over mandatory reporting in both the Northern Territory and in New Zealand illustrated this both in the positions taken by proponents of mandatory reporting and the efforts of their opponents to expose such assumptions. A number of basic assumptions underlying mandatory reporting laws can be identified, each of which are subjected to scrutiny in the research literature. Some critics hold that mandatory reporting laws are based on unsupportable assumptions. For example, writing of the United States situation Hutchison (1993) wrote:

*Nearly 30 years after the development and implementation of these mandatory reporting laws, there is little empirical evidence to support the assumptions on which they are based.*²⁵

An example of such an underlying assumption is that juveniles cannot avail themselves of the legal protection which the law affords and that they require advocates. Secondly, that abusive parents will not seek assistance and must be compelled to do so. The policy further assumes that in the absence of a mandatory reporting regime professionals and other non-family members will not bring the abuse of children to the attention of appropriate authorities. Further assumptions are that mandatory reporting provides correct and comparatively extensive reporting of such abuse that occurs, that mandatory reporting makes possible the recognition of symptoms at an early stage and that it is instrumental in precluding higher levels of injury and child deaths. Related assumptions are that professionals have the necessary skills and other means to carry out early identification of abuse and to forestall even worse injuries or fatalities. It may also be incorrectly assumed that resources will automatically be provided to meet needs arising from increased notification levels under mandatory reporting. Laws which cover mandatory reporting assume that child abuse occurs equally across all socio-economic groups and classes, that it is a 'classless phenomenon'. Finally, it is likely to be assumed that the problem of child abuse is more effectively addressed by specialized child protection services which target maltreatment itself rather than by more general child welfare measures aimed at ameliorating the overall positions of disadvantaged children and families in society. Hutchison (1993) gives detailed critical information gleaned from the literature which queries the basis or justified extent of each of these assumptions.²⁶

²⁵ Hutchison (1993: 57).

²⁶ Hutchison (1993: 57-59).

These are not purely abstract or incidental matters in the development of policy about mandatory reporting. As will become evident, similar unstated assumptions were evident during the Parliamentary debates in both the Northern Territory and New Zealand. It is therefore important to bear these arguable assumptions in mind when considering the use made by the policy-makers of arguments for or against mandatory reporting. Where research evidence either undermines the basis of such assumptions, or where the evidence in support of them is inherently weak, policy-makers intent upon being guided by research evidence might objectively be expected to be less in favour of a mandatory reporting option.

Difficulty of valid cost-benefit analysis of mandatory reporting

Cost-benefit analysis is a decision-making process which involves attaching a positive or negative pecuniary value to each consequence of every available policy option with the option having the highest net benefit then being selected.²⁷ As a policy development tool the cost-benefit analysis of mandatory reporting has been problematic. For example, Hewitt and Robb (1992) observed that the literature contained 'very little information even vaguely pertaining to this area'.²⁸ This was still the case a decade later as shown by a study on mandatory reporting in 2002 which failed to locate even one paper that specifically focused on the cost-benefit aspect of mandatory reporting.²⁹

The reasons why this should be so are not hard to find. Valid analysis of costs and benefits requires rigorous application of particular techniques and methodologies to a fixed set of known variables and parameters. Certain assumptions are made about the linkages between these factors and quantitative values assigned to various services and their assumed outcomes. In an area as complex as mandatory reporting this is an extremely difficult undertaking. As Harries and Clare state:

Cost benefit analyses are based upon certain assumptions, facts about expenditure and outcomes, use of methodologies to ascertain intangible effects, and the application of a set of complicated procedures to calculate the cost benefit equation. On the one hand, it involves a precise and clear articulation of the functions, activities, and tasks involved in the provision of a service and then calculating the cost for each. On the other, it is based upon a complete a complete identification and accurate measurement of all tangible and intangible,

²⁷ Hague Rod and Harrop, Martin, (2004: 311).

²⁸ Hewitt and Robb (1992: 39).

²⁹ Harries and Clare et. al. (2002).

*as well as short term and long term effects, on all stakeholders, which can be attributed to the service.*³⁰

Further, there is a particular problem which arises from the need to identify a discrete and separate model of practice within which mandatory reporting operates. This often not practically possible.³¹ Mandatory reporting takes various forms and includes differing ranges of mandated reporters. It may operate over a wide range of service delivery models. Precise control of all the variables for purposes of valid comparison is therefore virtually unattainable.

Following this brief consideration of the assumptions of mandatory reporting and methodological difficulties of formal cost-benefit analysis techniques with respect to it, we now present and examine the actual arguments, 'polemical, presumptive, and inferential', contained in the literature on mandatory reporting.³² Arguments for mandatory reporting with regard to its *effectiveness and efficiency* are considered on the basis of evidence presented in the literature to determine whether a case has been made for mandatory reporting in terms of those criteria. This highlights a range of key issues of concern to writers and practitioners in this field.

Standard arguments for and against mandatory reporting from legal analysis

This study of how policy was historically made in two jurisdictions is not principally concerned with establishing the primacy of either mandatory or voluntary reporting as a desirable policy option. In a secondary sense however, some evaluation of the options is inevitable given the weight of evidence against mandatory reporting as an effective policy tool. It is important in studying policy-making in this field to be aware in advance of the matrix of arguments both for and against mandatory reporting which have been proposed in the literature and were therefore available for deployment by the policy-makers. In the examination of the debates which follows we are interested to observe which of these arguments legislators employed, and which ones they found compelling for what reasons.

A significant summary of the 'field of argument' was provided in the Australian Law Reform Commission's 1981 Report on Child Welfare.³³ This Report is significant not

³⁰ Harries and Clare et. al. (2002: 29).

³¹ Harries and Clare et. al. (2002).

³² Ibid: 31.

³³ ALRC (1981) *Report on Child Welfare*, No. 18, AGPS, Canberra: 296-298.

only because of its comprehensiveness but also because it was a document which informed the two mandatory reporting debates which ranged on both sides of the Tasman despite the fact that they took place a decade apart. As already stressed this Report was considered not only by researchers and policy advisors but also by Parliamentarians, in both New Zealand and the Northern Territory.

Which of the arguments both for and against mandatory reporting were of greater influence in terms of policy outcomes will become evident in later chapters. At this point the arguments are presented in bare form.

Arguments made for mandatory reporting

The Australian Law Reform Commission quoted the following arguments in favour of mandatory reporting. In the first place, it reflects the law's commitment to the protection of children and their right to the preservation of health and life. Secondly, it is held to facilitate reports of abuse because of increased community awareness created by the existence of law and an accompanying increase of resources and services. Thirdly, it underpins research, statistics and prediction; social and geographical areas are identified leading to the appropriately targeted establishment of services. Fourthly, it assists in the establishment of a central register essential in prediction of abuse. Fifthly, it offers an advantage in loss of choice for professionals: the relationship of trust between the professional and the client is preserved given a legal obligation to report. Sixthly, it lessens the isolation of professionals. When reporting is compulsory they are relieved of sole responsibility for exercising discretion about what is to be done. In addition there are benefits from multi-disciplinary training and experience. Finally, it represents a public commitment to protecting abused children and enables the community to become involved in achieving that end. It should compel the generation of adequate services.³⁴

Arguments made against mandatory reporting

Against mandatory reporting the Australian Law Reform Commission mentioned first, that it may discourage adults from seeking help, especially medical attention, for children they have injured, in the knowledge that reporting may result. Secondly, mandatory reporting may constitute a breach of confidentiality, particularly the Australian Medical Association's Code of Ethics. In a small community cases become

³⁴ Ibid. following the paraphrase of Carter (1998).

public, forcing others underground. Thirdly, it may promote further violence; there is no proof that compulsory reporting does not precipitate further incidents of maltreatment and the withdrawal of the family from those who might have assisted. Fourthly, it may legislate for an unenforceable obligation. Professionals cannot be forced to report abuse and the community is averse to prosecuting professionals. Fifthly, mandatory reporting offers a simplistic solution to a complex problem. Legislation does not guarantee effective services and there is a danger in thinking that legislation solves the problem. There is also the danger that cases are reported but services over extended so no response occurs. Rather than the imposition of legal obligations emphasis should be on making services for families available and acceptable. Sixthly, it is best to rely on a professional's discretionary judgment as to individual circumstances and the consequences of reporting. Lastly, child abuse definitions are too vague to allow for legislative definition of the circumstances in which the duty to report arises. Confusion as to whether a case comes within the definition will probably lead to a failure to report.³⁵

The above represents a fairly comprehensive summary of typical arguments which have been offered anywhere on the subject of mandatory reporting. Our consideration later of the legislative debates the Northern Territory and in New Zealand will illustrate which of these were employed and which held greater sway in each jurisdiction. But it will also be useful to consider the criteria available to legislators to assess the evidence on the efficacy of mandatory reporting and to this we now turn.

Criteria for assessing the efficiency and effectiveness of mandatory reporting

What light does research literature throw upon the validity of these arguments about mandatory reporting? If legislators are to assess the policy of mandatory reporting in terms of the criteria of efficiency and effectiveness then it is first necessary that the parameters of those terms are clear. Carter (1988) has in part defined the *effectiveness* of mandatory reporting in terms of whether or not it prevents children from being abused, re-abused, or murdered; and *efficiency* in terms of the non-wasteful use of resources upon only those needing protecting. She writes:

For a (mandatory reporting) policy to be efficient it will clearly identify its target group without drawing large numbers of 'false' cases into the

³⁵ As paraphrased by Carter (1998: 14).

*child welfare system. For a policy to be effective it will reduce the frequency and severity of abuse.*³⁶

Given this basis, it is now possible to turn to the research literature to assess findings which answer the following questions:

- Does mandatory reporting reduce the incidence of abuse and re-abuse? Does it reduce the incidence of child murder?
- Does mandatory reporting clearly identify its target group?
- Does mandatory reporting draw large number of unsubstantiated cases into the protective system?

Having considered what the literature reveals with respect to these questions it may then be possible to observe in a more critical way any application of the criteria of efficiency and effectiveness by legislators in their consideration of the mandatory reporting policy option. In particular, if there is clear evidence either for against mandatory reporting, how is the action of a Government which establishes policy in a contrary direction to be explained?

Does mandatory reporting reduce the incidence of abuse and re-abuse, and child murder?

Harries and Clare et. al. (2002) note that the argument that mandatory reporting protects children at risk and prevents child deaths is the most axiomatic of the standard arguments for mandatory reporting. It is one that assumes that legal penalties associated with non-reporting by mandated persons heighten the likelihood of reporting. However, they also note from the literature that there is a high rate of re-reporting and that the majority of cases of serious injuries and child fatalities were already known to child protection services.³⁷ Besharov details a number of studies which showed that in the vicinity of 25% of child deaths were of children previously reported.³⁸ He later revised this figure upwards to between 35%-50%.³⁹ These

³⁶ Carter (1988: 5-6) Carter's criterion of *equity* in terms of fairness of application of a policy, and her further criterion about an effective policy also being one which breaks the connection between child poverty and violence, have been omitted here as wider matters which, whilst not without significance, do not bear directly upon the discussion of the central arguments for and against mandatory reporting.

³⁷ Harries and Clare et. al. (2002: 33).

³⁸ Besharov (1985).

³⁹ Besharov (1987).

figures suggest that reporting is not necessarily effective in reducing the likelihood of harm; and that reporting *per se*, does not guarantee effective interventions especially by overworked staff in child protection agencies where the demand for services frequently exceeds available resources. The significance of this latter point will become more evident later when the effect of mandatory reporting on notification and substantiation rates is considered. It is also true that individuals and families subjected to forensic investigation of alleged child maltreatment often report negative consequences from these investigations, particularly when allegations prove unfounded or where follow-up services are non-existent or inadequate.⁴⁰ There is a considerable body of evidence suggesting that lack of rehabilitative and therapeutic services for victims of abuse and their families who have been investigated following reported abuse, adds significantly to the long-term harmful effects of that abuse.⁴¹

The steep increase in the number of child abuse reports following introduction of mandatory reporting is frequently taken to demonstrate that mandatory reporting facilitates the identification of children who are at risk of abuse and who would remain undetected if it were not for mandatory reporting. For example, when in the United States there was a 225% increase in child abuse notifications between 1976 and 1987 many commentators saw this as a vindication of mandatory reporting.⁴² However, there is no evidence correlating mandatory reporting with the lessening of either abuse or child fatalities.⁴³ This may be due, first, to research-design problems. The variations of structure and operation between various mandatory reporting systems and the range of delivery mechanisms and the variety of mandated reporters in these systems make it extremely difficult to accurately measure the assertion that mandatory reporting reduces the incidence of abuse, re-abuse, and child fatalities.⁴⁴ Secondly, the introduction of mandatory reporting systems is often accompanied by widespread media publicity and public and professional education campaigns.⁴⁵ The complexity of controlling all the variables which may determine the effect of mandatory reporting systems on the incidence or injury and death makes valid and precise evaluation of the effectiveness extremely difficult in any jurisdiction.

⁴⁰ Harries and Clare et. al. (2002).

⁴¹ Harries and Clare et. al. (2002: 33).

⁴² Hutchison (1993: 58).

⁴³ Ainsworth (2002: 60).

⁴⁴ Harries and Clare et. al. (2002: 35).

⁴⁵ Hutchison (1993: 58).

This highlights the many influences affecting policy making in this area and the consequent difficulties which stand in the way of making simple policy choices.

Despite these difficulties, on a slightly different tack Ainsworth (2002) conducted a comparative study asking the question: whether mandatory reporting really makes a difference? He compared outcomes in two Australian States, New South Wales and Western Australia, the former having a mandatory reporting regime and the latter operating a voluntary reporting system.⁴⁶ Specifically, he investigated 'What evidence is there that children are abused and neglected *less* in jurisdictions where mandatory reporting exists in comparison with jurisdictions where it does not exist?'⁴⁷ The aim of a reporting system is to detect abuse and the convention is to report the incidence of substantiated case of child abuse and neglect as a rate per 1000 children in the population. The higher the substantiation rate, the more effective the reporting system in detecting actual abuse. It was found that the national rate for all Australian mandatory reporting jurisdictions (1999-2000) was 3.9/1000, for New South Wales it was 4.2/1000, while in Western Australia it was 7.5/1000. This comparison put the New South Wales mandatory reporting system in a relatively poor light. Ainsworth states:

*These rates confirm that Western Australia, the state without mandatory reporting, has a higher incidence per 1000 children of substantiated cases of abuse and neglect than New South Wales, the state with mandatory reporting.*⁴⁸

Thus the non-mandatory reporting State is more effective at detecting abuse than is the State with mandatory reporting. However, to argue from this conclusion that there is *less* abuse in Western Australia than in New South Wales appears only to be valid on the assumption that higher levels of detection automatically, and in all cases, imply less abuse and that reporting systems *per se*, whether voluntary or mandatory, prevent re-injury.⁴⁹ In fact there is no evidence in the literature to support these assumptions. Carter reports United States figures which show re-injury rates of between 5%-29%, and quotes an English study suggesting that 10.7% of registered cases involved re-injury after initial registration.⁵⁰

⁴⁶ Ainsworth (2002: 60).

⁴⁷ Ibid: 57.

⁴⁸ Ainsworth (2002: 60).

⁴⁹ This assumption is clearly questionable. See Harries and Clare et. al. (2002); Carter (1988).

⁵⁰ Carter (1988: 20).

Hewitt and Robb (1992) in their survey of mandatory reporting literature conducted in New Zealand as part of the background policy study for the proposed mandatory reporting legislation reported that it was not possible to establish a relationship between an increase in the report rates for child abuse and the actual incidence of abuse.⁵¹ They also stated that:

*While there is no doubt that more potential victims are identified with mandatory reporting there is considerable doubt whether more actual victims are identified.*⁵²

This comment will again be relevant when the question concerning what is meant by 'substantiation' and the comparative substantiation rates under mandatory and voluntary reporting regimes are discussed.

With regard to child deaths, the literature suggests that confidence placed in mandatory reporting as a preventative measure may also be seriously misplaced. A 1984 study of 23 American States all of which had implemented mandatory reporting reported 500 child abuse fatalities. This appears to demonstrate that mandatory reporting as such does not eliminate the potentially deadly consequences of child abuse. Further, studies show that in a significant number of cases the children murdered had *already* been reported to the authorities, with estimates ranging from 25%- 50%.⁵³

More recent studies merely confirm the need for skepticism regarding the role of mandatory reporting in preventing child deaths. A 1996 study in the United States found that slightly more than 50% of children who had died through maltreatment and 20% of children who were seriously injured by abusive caregivers, were not only known to the child protection system but had already been the subject of formal investigations as to their safety.⁵⁴ In Australia, Ainsworth (2002) presents figures which show that for the 1989-1999 decade the national rate of child death due to abuse has remained relatively constant at between 9% and 10% of all the overall annual child death rate of approximately 315 per 100,000. However during this period, when Victoria introduced a mandatory reporting system, the child death rate due to abuse in that State remained unaffected. Ainsworth comments:

⁵¹ Hewitt and Robb (1992).

⁵² Hewitt and Robb (1992: 23). Emphasis in original.

⁵³ Besharov 1985b; Carter (1987: 7).

⁵⁴ Sedlak and Broadhurst(1996) - quoted in Harries and Clare et al. (2002). Original not sighted.

...if there is a link between mandatory reporting and a reduction in child deaths, this effect should have occurred during these years. No reduction has occurred, which suggests that contrary to expectations, mandatory reporting does not have an impact on the incidence of child deaths even though popular opinion appears to believe that it does.⁵⁵

In summary, it appears from the literature then that there is considerable difficulty in asserting unequivocally that mandatory reporting reduces the incidence of either abuse, re-abuse, or child murder. The precision of mandatory reporting in identifying child abuse victims will be considered next in terms of whether mandatory reporting identifies a greater number of victims of child abuse than does a voluntary system.

Does mandatory reporting clearly identify its target group?

There is clear evidence both from the United States and Australia that the rate of reporting of child abuse has increased since the introduction of mandatory reporting.⁵⁶ The answer to the question whether mandatory reporting clearly identify its target group has several elements: the matter of definitions, the issues of over and under-reporting, and definition of 'substantiation' which is dealt with in the next section. For purposes of comparison it is preferable to have a common definition of 'abuse' and 'victim'. However, child protection reporting systems vary widely with regard to these matters, in particular on whether abuse is given a broad or narrow definition.⁵⁷

As early as 1974 Sussman observed of the American scene where mandatory child abuse reporting laws had been enacted in every state between 1963 and 1967 that:

The word 'abuse' is considered so pregnant with meaning and so laced with ambiguity that thirty three states have foregone any attempt to define it.⁵⁸

Furthermore, whereas some statutes may use highly technical language, others resort to the use of general terms referring to the infliction of physical harm by non-accidental means. Other statutes may steer a middle course and rely on definitions somewhere in between the technical and the general and may refer to risk of serious harm or injury as part of what constitutes abuse or maltreatment. This illustrates the

⁵⁵ Ainsworth (2002: 60).

⁵⁶ Bell and Tooman (1994: 347); Ainsworth (2002).

⁵⁷ Hewitt and Robb (1992: 15).

⁵⁸ Sussman (1974: 250).

confusion in definitions employed across jurisdictions and the consequent lack of a common denominator for purposes of comparison.

An additional problem when trying to make comparisons arises when definitions of what constitute child abuse are expanded. The substance of what has been defined as 'abuse' has broadened over the past decades with emotional and psychological forms of abuse coming into greater prominence. Forms of sexual abuse have also received a very high profile and mention in reporting laws more recently.⁵⁹ Clearly, as definitions change and broaden there is a net-widening effect. More cases are gathered, more investigations undertaken, and more agency time is devoted to completing these, and implementing any follow-up plans and interventions. Resources may be diverted from support and treatment to investigation. But investigation, of itself, does not protect any child.⁶⁰

The assumption that mandatory reporting accurately identifies children who are at risk of maltreatment is called into question by the significant rates of under and over-reporting identified in the literature. When it comes to compulsory reporting of child abuse the cooperation of professionals cannot necessarily be relied upon. Sedlak's 1997 national incidence study in the United States found that despite the existence of a mandatory reporting regime with civil and/or criminal penalties for non-compliance mandated reporters nevertheless do not report a significant number of at risk children.⁶¹ Besharov (1990) quotes a Texas study where over a three year period, 40% of 270 children who died through abuse had not been reported by those health, education or welfare agencies which had contact with them when they died or during the previous twelve months. There are numerous studies which detail the many factors which affect doctors' willingness to cooperate with mandatory reporting laws and which detail their frequently low compliance rates.⁶² Over-reporting of cases which do not meet the criteria for investigation/intervention similarly detract from the accuracy of mandatory reporting in targeting genuine cases of maltreatment.

⁵⁹ Hewitt and Robb (1992: 15); Bell and Tooman (1994: 347); Lindsay (1994).

⁶⁰ Sedlak and Broadhurst(1996) - quoted in Harries and Clare et al. (2002)

⁶¹ Ibid.

⁶² See for example, Faller (1985) who quotes the National Study of the Incidence and Severity of Child Abuse and Neglect. OHHS Publication # OHHS 81-30329, Government Printing Office, Washington, D C (1981); Holland (1997); Carter (1988).

In general, the literature finds an under-reporting of appropriate cases by professionals together with an over-reporting of inappropriate cases.⁶³ Mandatory reporting does not appear to be a particularly accurate means of targeting the abused or endangered child.

Does mandatory reporting draw large number of unsubstantiated cases into the protective system?

In child protection policy the concept of 'substantiation' following investigation is critical. However, it is also problematical. Substantiation of a child abuse notification means that the report has been found, according to some criterion, to have substance in the view of a child protection agency or practitioner. Usually the criterion employed is the legally-defined marker for a particular kind of child abuse as specifically set out in child protection law of that jurisdiction. As mentioned above, legal definitions may themselves be wide or narrow, and are thus open to greater or lesser degrees of interpretation. Further, abuse definitions can also be classified according to whether they are based upon the signs and symptoms of abuse or refer to the circumstances or conditions under which the abuse is deemed to occur. The resulting matrix of options only deepens the interpretive possibilities. Practically however, a case is considered to have been 'substantiated' if sufficient evidence is found for one or more of the reported allegations. At the same time, obviously, substantiation by an investigative agency does not amount to judicial determination of the fact that abuse has occurred.

'Substantiation' is therefore an administrative rather than a legal concept. But for even this lesser category of confirmation to apply, an abuse allegation must first be investigated. However, not all child protection notifications are in fact investigated; some are screened-out at the point of intake into the child protection system as not warranting investigation. Not all investigations are completed and this may be for a range of reasons, either practical (for example the family has moved) or resource-based (for example, unavailability of workers). Those reports that are fully investigated may have several outcomes: found, not found, or unclear. Therefore an allegation may be 'unsubstantiated' either because it was not investigated, the investigation was incomplete, or the investigation although completed found insufficient evidence to warrant the conclusion that abuse had occurred. Unless the

⁶³ Carter J. et. al. (1988: 41).

definitions of both 'substantiation' and 'unsubstantiated' are clear and employed in a consistent manner, research employing these concepts will be to that extent weakened by such definitional problems.

It has already been noted that one of the most significant findings in the literature is that the introduction of mandatory reporting invariably is associated with a sharp increase in the number of reports to the child protection authorities for investigation.⁶⁴ It may be doubted whether this is a direct causal relationship because other factors such as education and publicity campaigns are often linked to the implementation of mandatory reporting.⁶⁵ The other significant statistic associated with mandatory reporting is the steep rise in 'unsubstantiated' reports, however the term is defined, to the point where, in the United States for example, in the early 1980s it was being found that the majority of reports investigated were dismissed for want of evidence.⁶⁶ This is one of the unintended negative effects of the introduction of mandatory reporting.⁶⁷

Certainly, the rise in the number of unsubstantiated reports under mandatory reporting was a key concern to policy advisors in both in the Northern Territory and in New Zealand because it diverts attention and resources away from prevention and treatment. The result is that, instead of being available for necessary work with those children known to be at risk, valuable resources are devoted to following up subsequently unfounded cases or cases that are not able to be checked for other reasons. As will be shown, this was a major influence upon the thinking of New Zealand legislators in the 1990s and justifiably so. Drawing on Australian and international experience, Ainsworth wrote in 2002:

It has been argued that mandatory reporting has transformed child welfare from a system that focused on providing services to children and families to one where forensic and investigative activities take precedence and drain resources away from these services ... The analysis presented here suggests mandatory reporting systems are overburdened with notifications, many of which prove not to be substantiated, but which are time consuming and costly. As a result it is more than likely that mandatory reporting overwhelms services that are supposed to be targeted at the most at-risk children and families

⁶⁴ Carter (1988); Besharov (1985).

⁶⁵ Hutchison (1992).

⁶⁶ Carter (1988: 23) quoting Besharov (1985b).

⁶⁷ Faller (1985).

*who then receive less attention than is required to prevent neglect or abuse.*⁶⁸

Unless abuse, however defined, is found, the investigating authorities have no cause to be further involved. But where an allegation is not proven, a child and family have been subjected to highly intrusive and often traumatic procedures to no avail.⁶⁹ Furthermore, even if abuse is found then there remains the question of what can and should be done about it. Ainsworth points out that in over-stretched child welfare agencies there is no guarantee that substantiation will necessarily be followed up with service, support or any other action.⁷⁰

In summary, there is a strong tendency for mandatory reporting to draw a high proportion of unsubstantiated cases into the protective system. This is reported to lead to inefficiencies in terms of resource use and to a general overburdening of the child protection system which becomes even less able to perform its forensic functions let alone successfully undertake broader therapeutic and support functions.

Conclusion

The above discussion has outlined key issues to be faced in making policy designed to reduce child abuse by mandating reporting of its suspected occurrence. Clearly, in the terms postulated above the policy of mandatory reporting appears to be neither efficient nor effective. It draws large numbers of families into the child protection system for investigation and very frequently the reports cannot be substantiated. Furthermore, it reduces the resources available for treatment and follow-up of high-risk cases and confirmed cases of serious abuse by diverting the focus of child welfare services to the forensic investigative processes at the expense prevention and treatment.⁷¹ Evidence is lacking that mandatory reporting prevents child injuries and deaths or reduce their incidence. It is therefore not shown to be *effective*. In fact it appears to make the situation worse by clogging child protection systems with case numbers that outstrip resources. Thus mandatory reporting tends to worsen the situation of individuals and limit the ability of the child protection system itself to cope.

⁶⁸ Ainsworth (2002: 62).

⁶⁹ Faller (1985: 65-66).

⁷⁰ Ainsworth (2002: 61).

⁷¹ Harries and Clare et al. (2002); Carter (1988); Scott (1995).

On this evidence it would appear that mandatory reporting cannot be considered *efficient*.⁷²

In the historical narratives which follow we shall be able to observe how these factors played out in the Northern Territory and New Zealand debates. The task then will be to explain how in the face of such evidence-based conclusions from numerous studies it might be possible to explain the adoption by legislators of a mandatory reporting regime. Alternatively, it will be possible to assess the degree to which such evidence was instrumental in persuading legislators against mandatory reporting and why.

However, before proceeding with these considerations, the next chapter discusses the methodology employed in this study.

⁷² Carter (1998) also shows evidence that as mandatory reporting differentially targets the poor, the disadvantaged and the vulnerable, it cannot be judged an *equitable* policy.

CHAPTER THREE

THE DOCUMENTARY METHOD AND THE COMPARATIVE RESEARCH TRADITION

INTRODUCTION

This chapter discusses the two social research traditions that are drawn upon in the present study. These are the archival or documentary method and the comparative approach. This is done in order to situate the study within those traditions and to provide a rationale for the research approach adopted. In addition, the range of documentary sources employed will be outlined together with a description of the methodology employed.

In terms of these traditions the study can be characterized as a qualitative, historically-oriented, comparative-descriptive, focused study.⁷³ The focus is essentially *historical*, since, via the collection and analysis of pre-existing documents, sets of historical occurrences are described and documented and answers to certain research questions pertaining to the past sought. It is *descriptive-comparative* in that it seeks to use documents to describe and compare events in two jurisdictions in separate countries without letting analysis predominate. It is *qualitative* rather than quantitative in its thrust and is strongly influenced by the narrative tradition within policy analysis.⁷⁴ By telling the stories and connecting the elements of agent, act, scene, agency, and purpose it seeks to convey something of the flavour of the policy processes in each jurisdiction instead of merely collapsing them into abstract analytic categories. As Fischer (2003) explains, following Burke (1945; 1950) 'this means offering answers to five related questions. What was done (act)? When or where was it done (scene)? Who did it (agent)? How he or she did it (agency)? And why (purpose)?'⁷⁵

Therefore this study quite deliberately aims to 'tell the story' of the events and processes under examination before seeking to arrive at interpretations or conclusions in answer to its own specific research questions.⁷⁶ Finally, in Ginsberg's terms, it is a *focused twin study* rather than a single instance case-study or a multi-

⁷³ Harrop (1992: 5).

⁷⁴ See Fischer, Frank (2003) in particular Chapter 8, 'Public Policy as Narrative'.

⁷⁵ Fischer, Frank (2003:166).

⁷⁶ Listed on page 12.

case statistical analysis and concentrates on empirical examination on the *origins* of policy, commenting only indirectly and in passing upon on the *substance* or *impact* of policy.⁷⁷

Archival research and document study

Approaches to documentary research

The primary research method employed in this study is documentary research. Documents, described as 'the sedimentation of social practices'⁷⁸ are frequently employed in social research either as sources of information and data or as the objects of study in their own right. Very little research in the social sciences is accomplished without some recourse to documents. The works of Marx, Weber and Durkheim at the very beginning of the modern social scientific enterprise stand out as exemplars of this. Certainly, at times, documentary research may be restricted to accessing official statistics, researching existing literature, or locating earlier studies of the same type or in the same field, in preparation for other forms of inquiry such as action or survey research. However, other research activities, such as the present study, may be completely dependent on documentary research methods at every stage. Documentary research may encompass a variety of theoretical issues and a range of methodological approaches both quantitative and qualitative, or a mixture of both.

There are five main types of documentary research.⁷⁹ *Qualitative documentary research* aims to discover and explain the central concepts, propositions and themes of a document, inquires into its authorship, period, provenance and sources, and discusses its conclusions. The emphasis is more on retelling the story than on analyzing, categorizing, coding or otherwise treating the data within the document. *Content-analysis* is a sophisticated analytic technique. It 'attempts to make objective and systematic inferences about theoretically relevant messages'.⁸⁰ It does this by coding and frequently quantifying the content of a document in an attempt to gain objective analytic knowledge about 'who says what to whom, how, with what effect, and why'.⁸¹ *Existing data analysis* (sometimes referred to a *secondary data analysis*)

⁷⁷ Ginsberg (1982).

⁷⁸ May, T. (1997).

⁷⁹ This discussion draws on the work of Sarantakos (1993), Dane (1990), and May (1997).

⁸⁰ Dane (1990: 170).

⁸¹ Ibid:180.

uses already-produced research data, either in raw or aggregated form, which is subjected by another researcher or research group to further analysis to produce previously undiscerned implications from that data.

The fourth research type, *descriptive-comparative research* employs documents to inquire into and represent particular events or processes and on this basis identify cross-cultural or cross-national similarities and differences or make comparisons between earlier and later periods. Finally, there are *historical studies*. Here, understanding is sought by means of methodical gathering and impartial assessment of information relating to the past. The aim is to 'explore research questions or test hypotheses concerning causes, effects or trends that may help explain present or anticipate future events'.⁸² While the present study incorporates and combines several of these approaches to documentary research, notably the qualitative and descriptive-comparative, it is primarily historical in character.

Positivist or other theoretically-oriented researchers, or researchers simply wary of the status of history in the social sciences, sometimes view documentary research as a restricted or inferior methodology in social research.⁸³ Despite this, it is true that the wide assortment of documentary sources and the wealth of socially relevant information stored today in documentary form, give the method great potential for increased understanding of social processes and structures and for answering research questions of interest to social researchers. May (1997), who views documents as the settled remains of past social practices, also sees them as having:

*the potential to inform and structure the decisions which people make on a daily and longer-term basis; they also constitute particular readings of social events. They tell us about the aspirations and intentions of the period to which they refer and describe places and social relationships at a time we may not have been born, or were simply not present.*⁸⁴

Of course, when the research involved is of an historical character, there is frequently no practical alternative but to resort to the use of documentary analysis.

What are documents?

Certainly, the way in which documents are employed in research and how documents may be conceptualized demands theoretical and methodological

⁸² Burns, R.B. (2000: 481-482).

⁸³ Plummer, K. (1990) quoted in May (1997: 158).

⁸⁴ May, T. (1997: 156-157).

justification. The definition of what constitutes a 'document' is of prime importance in this connection. Documents come in many shapes and forms, both likely and unlikely. Scott (1990) argues that the scope of what are properly to be understood as documents is extraordinarily wide and extends from Government papers of all types to the marginal cases of 'photographs, invoices and stamps'.⁸⁵ Considerations such as this give rise to Scott's definition of a document as 'an artifact which has as its central feature an inscribed text'.⁸⁶ He also points out that it is the process of inscription, rather than its vehicle, that is important. The material base of a document may be clay, paper or an electronic medium.⁸⁷ Understood in this way, documents may be conceived of as 'physically embodied texts, where the containment of the text is the primary purpose of the physical medium'.⁸⁸

The wide extent of documentary materials includes a particular range of textual materials which are most frequently the subject of social research attention any of which may provide the unit of analysis in a social scientific study. This particular array of materials includes public and archival records such as Hansard, census statistics, statistical year books, court and prison records, gravestones, newspapers and pamphlets, literary texts, and the notes and files of professionals and of service organizations and agencies. Other sources may include documents such as diaries, letters, suicide notes, family or estate accounts, and autobiographies, as well as official administrative documents internal to an organization such as meeting agendas and minutes, progress reports, and policy proposals, and finally, formal studies and reports on particular research topics.⁸⁹ A number of these types of documentary evidence have been utilized in the present study.

Use and classification of documents

There are a number of ways of usefully classifying documents used in research activities. Of major importance is the identification of documents as primary, secondary or tertiary sources of information. This system of categories refers to the degree of direct experience held by the writer of the events or phenomena in question. Thus *primary* sources are those documents composed or assembled by persons who were present at the events in question and thus in a position to give

⁸⁵ Scott, (1990: 19).

⁸⁶ Ibid: 5.

⁸⁷ Ibid.

⁸⁸ Scott (1990: 13).

⁸⁹ Following Sarantakos, S. (1993).

eye-witness accounts; *secondary* sources are based on or derived from primary records, while *tertiary* sources are those which facilitate the location of other references or information (e.g. bibliographies, indices, and abstracts). Documents may also be classed as *contemporary* or *retrospective*, depending on the proximity in time of their writing to the events they describe or to which they refer.⁹⁰

The current study relies most heavily on the primary materials represented by Hansard, and the information recorded in official papers by immediate players in the policy-formation and policy decision-making processes in each jurisdiction. It is largely *about* what these documents are understood to convey.

May (1997) points out that in addition to the influence of the researcher's own perspective and purposes, the use of documents in social research is also determined by the aims of the study, the availability and accessibility of the documents in question, and the available resources, including time.⁹¹ Obviously, only documents which notionally relate to the aims of the study would be of interest to a researcher, but there is no guarantee that they either still exist or existed in the first place, nor, if in existence, that they are necessarily available to be examined. Information, which might be relevant and desirable to have access to, may never have been written down. Documents may have perished, may have been misfiled, or may not be in the public domain. As in the present case, research based on Departmental files may involve all these factors.

Further, texts of interest may reside in private or restricted archives which the researcher may or may not be able to access. Accordingly, it is possible to classify documents in terms of their public accessibility. Scott has developed a fourfold classification system which identifies documents as closed, restricted, open-archival and open-published.⁹² Much official information is subject to legislative privilege and access to it may require a formal application under relevant official information legislation. Any material used may have to be vetted by the authorities to ensure compliance prior to the issue of any clearance for publication. This was the case in the present study, at least in respect of the files of the Ministry of Social Development

⁹⁰ Sarantakos, S. (1993); May (1997: 161).

⁹¹ May (1997: 166).

⁹² Scott (1990).

in New Zealand. No such legislation applied in the Northern Territory at the time access was sought.

The use of pre-existing documents as the source of basic information for a social scientific study raises similar questions about the quality of the evidence to those which arise in other fields of social research. Scott has identified four criteria assessing the quality of documentary evidence.⁹³ These are *authenticity*: whether the item in question is genuine and whether it is an original or a copy; *credibility*: whether the evidence is free from inaccuracy and misrepresentation, and can be believed to be an instance of what it claims to be; *representativeness*: how typical of its kind is this piece of evidence, and if it is not representative, to what extent is that the case (how biased is the sample?); and finally, *meaning*: which refers to the degree of clarity and comprehensibility of the evidence to hand. In the current investigation all these criteria were pertinent, for unless it was assured that the materials consulted were genuine, believable, typical of the material contained in the relevant depositories of information on the topic and could be clearly understood, the research would not be viable.

Methodological issues in documentary research

A major issue in documentary research, already briefly alluded to, is the question of 'bias'. In the research context, bias refers to systematic errors which compromise the impartiality of the research or methodically favour one result over other possible conclusions. There are several potential sources of bias in using documentary sources. Two major sources are *selective deposit* and *selective survival*.⁹⁴ Not all the relevant available information may have been collected and stored and not all it may have survived. Key records may be missing or have been incorrectly classified so that retrieval is difficult or impossible. Files may have been purged either deliberately or accidentally. Copies rather than originals of documents may be on the file which gives rise to questions about how exact the copying has been, whether the copy was actually employed, and whether it is an earlier or later version of the original. Additionally, documents are written by authors with opinions and selective views; they may not present a completely accurate or exhaustive account, they may be partial or tendentious, they may be designed to present the author in a particularly favourable light.

⁹³ Scott (1990).

⁹⁴ Webb, E.J. et. al. (1966) quoted in Bulmer (1984: 114).

In the present study, one significant factor limiting bias has been to examine the entire body of parliamentary debate material on the topic of mandatory reporting in the specified period. There has been no sampling of speeches; all have been read and considered. Hence to the extent that the Hansard itself is a full, accurate and complete record of debate that aspect of the problem of bias, it would seem, has been given satisfactory attention.

With regard to the Departmental files the position is far less satisfactory. In the first place the research has been dependent on the good offices of archivists to locate and retrieve potentially significant files. There is no easy way to assess with complete accuracy how complete the retrieval of relevant material has been. Selective deposit is also an issue. It is entirely possible that key papers, memoranda, reports and so forth have inadvertently been omitted, or have subsequently been lost from the filed record, and were thus not available to the researcher. Further, due to major Departmental reorganizations in both jurisdictions, the completeness and accessibility of the file record may have been compromised. It is impossible to tell with full assurance.

Despite such limitations of documentary research, which need to be taken into account, there are also many advantages and potentials.⁹⁵ Notable amongst these is the fact that documents permit researchers to enquire into past events where they were not personally present. Often documents are readily available in libraries, archives or via the Internet. The fact of their pre-existence means that materials do not have to be solicited or written up especially for the research. Other frequently mentioned advantages of documentary methods are the relatively low cost of documentary research as compared with some other research methods. Although as Burns points out, considerable time and sometimes travel may be required to locate vital documents.⁹⁶ Often documents are the only available source of the information required to answer the research questions. The original players may be dead or precluded from speaking, or the cost of interviews or a survey may be prohibitive. Finally, documents often yield high-quality information, allow for the possibility of re-examination of the data, and are non-reactive since as 'finished products' the documents are not influenced by the research process.⁹⁷

⁹⁵ This discussion follows Sarantakos (1993).

⁹⁶ Burns (2000: 489).

⁹⁷ Sarantakos (1993).

Documentary sources employed in this study

This study relies for its basic data primarily but not exclusively on official publications. The chief documentary resources employed were the records of the respective parliamentary debates ('Hansard') with associated papers such as draft bills, amendments, and select committee reports, from each jurisdiction. In New Zealand, these were the New Zealand 'Parliamentary Debates' and in The Northern Territory, the 'Parliamentary Record'. The transcribed debates and records of decisions in each legislature provided the primary source material for tracking the process of the policy proposal through the legislative system, and for analyzing the views of parties and members of the Legislature in the debates. They constitute the official record of the substance of that process.

The second major resource employed in the study were official papers. These are documentary materials comprising mainly reports, correspondence, memoranda and Cabinet papers, and commissioned research generated within the respective bureaucratic systems, which are held on file by the main Government Departments involved in formulation of the policies under examination. In the Northern Territory these were selected files of Territory Health Services, the successor department to both the Department of Health and the Department of Community Development of the late 1970s and early 1980s. The significant files in New Zealand were the files of the former Social Policy Agency of the Department of Social Welfare, and which are currently held by its successor department, the Ministry of Social Development. This class of document included research papers and reports formulated as part of the policy analysis and advice process.

A third significant category of archival material was the reports of public enquiries pertaining to or touching upon matters of child welfare in the respective jurisdictions, notably, in the case of the Northern Territory, the report of the Martin Committee into the Welfare Needs of the Northern Territory (1979), and in New Zealand, the Ministerial Review of the Children Young Persons and Their Families Act 1989 (Mason Report, 1992).

Comparative Social Research

The second research tradition drawn upon in this study is the comparative tradition. After a brief consideration of the role of comparison in human learning several definitions of this tradition in the study of public policy are discussed. The main aims

and scope of the comparative tradition are outlined and then approaches, methods, and frameworks which the tradition employs are considered. The benefits claimed for the tradition are reviewed before outlining the chief limitations and deficiencies of the comparative approach.

The justification for employing the comparative method in the field of public policy studies is that by gauging one state of affairs in the light of another it is possible to obtain otherwise unavailable insights into both. As Heidenheimer, Hecllo and Adams note:

*By assessing one situation against another we gain a fuller perspective of both options and constraints. This kind of perspective is effectively achieved by comparing policies across national boundaries.*⁹⁸

Similarly, Karl Deutsch holds, in the context of inter- and intra-class studies, that 'the study of differences ... is indispensable if social science is to progress and theory to avoid sterility'.⁹⁹ Arguably, this also may be held to apply to cross-national comparisons.

Aims of comparative study

What is the aim of academic analysis of public policy from a comparative perspective? Heidenheimer and his colleagues identified two broad aims, one more practical in its reach and the other perhaps more theoretical in nature:

*One aim on this agenda is to learn why some governments seem to fare better than others at coping with similar problems ... A second aim in comparing public policies is to gain deeper understanding of the governmental institutions and political processes themselves.*¹⁰⁰

These are more modest aims perhaps than those some comparative researchers working under 'grand theory' models may have entertained in the past when they sought to explain, on the basis of their comparative studies, the global nature of society *en bloc* or to produce general laws about how societies or welfare states always and everywhere evolve. There now appears however, to be a more modest appreciation on the part of practitioners of the tradition's potential. Higgins has pointed out that 'comparative studies in social policy as with other areas of social

⁹⁸ Heidenheimer, Hecllo and Adams (1983: 1).

⁹⁹ Deutsch, K. (1987: 10).

¹⁰⁰ Heidenheimer, Hecllo and Adams (1983: 2).

science may help us to answers some questions and not others'.¹⁰¹ In the present project it is hoped that the use of comparative methodology will highlight some of the issues and considerations surrounding decision-making in any jurisdiction which seeks to adopt a policy such as mandatory reporting of alleged child abuse and will provide greater understanding of the impact on policy formation of governmental structures and processes than would have been available in a single jurisdiction study.

Comparative public policy studies defined

Comparative public policy can be understood as 'the study of how, why and to what effect different governments pursue particular courses of action or inaction'.¹⁰² There are many examples of comparative activity in the history of Western social science.¹⁰³ Despite this pedigree, it might also be argued that the field of comparative study of social policy is a relatively new development. Key phenomena of the past century have been the growth of bureaucratic states and the size of government which has naturally attracted the attention of scholars, including those interested in comparative approaches. Subsequently the dismantling of the welfare state, the emphasis on smaller government, privatization and neo-conservative approaches to policy generally has provided a fertile field of study. This modern tradition represented by Norman Ginsberg (1992) takes a less historical approach and turns our attention to recent social developments, holding that 'the terms 'social policy' and 'the welfare state' are virtually synonymous'.¹⁰⁴ Therefore, it is probably true to say that a large portion of the literature in the tradition of comparative policy analysis initially consisted of various kinds of attempts to plausibly explain the origins and development of welfare states understood as 'the comprehensive statutory welfare activities of many modern societies'.¹⁰⁵

However, it is important not to overstate the accomplishments of the genre. In this regard Ginsberg sounded a note of caution when he wrote:

The very suggestion of comparative analysis of social policy is problematic because it conjures up the hope that social scientists have developed rigorous methods and established schools of thought

¹⁰¹ Higgins (1980).

¹⁰² Heideneheimer, Hecllo and Adams (1983: 2-3).

¹⁰³ From Aristotle via Machiavelli to the development of grand theory' in the nineteenth century.

¹⁰⁴ Ginsberg (1982: 18).

¹⁰⁵ Carrier and Kendal (1977: 271).

*for comparing welfare states. Nothing could be further from the truth. Twenty years ago the field of study barely existed, though writing and research have expanded considerably since then attention has been particularly focused on historical and political origins of benefit systems and on comparing aggregate public expenditures on social needs. In areas such as family policies and on questions such as the implementation and impact of policies we only have a few pinpricks of light.*¹⁰⁶

The necessary attitude of humility in the face of complexity is reinforced when the reflection is made that the present study discloses two entirely opposite policy approaches towards reporting of child abuse in two nearby and cognate jurisdictions. It might seem at times that the few available pin pricks of light to which Ginsberg refers, serve only to illuminate confusion and controversy in matters of welfare provision and intervention.

Origin, substance and impact of social policy

It is also possible to approach the analysis of social policy by examining and distinguishing between the *origins* of social policy the *substance* of social policy and the *impact* of social policy.¹⁰⁷ In examining social policy impact, researchers are concerned to assess how people's lives are actually affected by the policies of government and the extent to which social policies entrench or ameliorate existing structural inequalities within societies. The analysis of the origins of policy involves inquiry concerning the political and social forces and demands which pressure governments to form policy. This approach requires consideration of the role of political parties, the power of corporate bodies whether professional, industrial or governmental, the capacity of the state itself to bring about change on its own agenda, and the political struggle of classes and interest groups. Concern with the substance of social policy focuses on the nature and purposes of policy, that is, its structure and function. Ginsberg identifies three broad approaches: the idealist, the sociological and the economic. The first of these is concerned with the various ideologies, and contests between them in which certain policies come to prevail over others; the second, examines the role which policies play in maintaining social order and legitimizing existing social relations in a society; while the third perspective conceives of social policy as epiphenomenon of economic policy and is concerned to show how it reflects the shifting requirements of capital over time.

¹⁰⁶ Norman Ginsberg (1992: 18).

¹⁰⁷ cf. Ginsberg (1992: 10ff.).

While the present study includes some treatment of all three of these aspects, the primary focus is on the origins of the policies in question and the assumptions made in the policy-making process about their impact in reducing the incidence of child maltreatment. Consequently, relatively little attention is given to details of the substance and structure of the policies themselves, and none to their post-implementation impact.

Comparative Methodology

Higgins points out the complexity of the comparative enterprise, stating:

*Those interested in comparative research in social policy are faced with a daunting series of problems. They must decide both 'what to compare' and 'how to compare' as well as gathering enough material to make comparison possible...*¹⁰⁸

One of the distinctive features of comparative analysis of public policy as a tradition of social scientific study is that it uses material and techniques from a wide range of disciplines and tends to rely on others' primary data to which it applies the techniques of secondary analysis. Indeed, 'there seems to general agreement that there is no special 'comparative methodology'.¹⁰⁹

It is arguable that because comparative public policy draws elements from many disciplines it can never become a self-contained, specialized discipline. In elaborating their definition of comparative public policy as the study of 'how, why and to what effect different governments pursue particular courses of action or inaction', Heideneheimer, Heclo and Adams identify the differential influence and use made of various specialties. In examining the 'how' aspect comparative public policy draws heavily upon the findings and techniques of comparative government, public administration and political science, whereas exploration of the 'why' dimension frequently encompasses matters dealt with fields such as political sociology, history, and social psychology. The 'to what effect' component will frequently rely upon policy analysis, economics and ultimately social philosophy.¹¹⁰ It will be clear from succeeding chapters that the historical approach to research has been relied on strongly in the present investigation. This reflects the nature of the current project as primarily an investigation into 'why' a certain policy approach was taken in each jurisdiction under consideration.

¹⁰⁸ Higgins (1980: 1).

¹⁰⁹ Antal (1987).

¹¹⁰ Heideneheimer, Heclo and Adams (1983: 8).

Despite this complexity there are, nevertheless, a number of characteristic techniques which are frequently employed in comparative studies. Harrop states that most comparative studies fall into one of three categories: case studies, statistical studies (based on many cases), or focused comparisons (based on few cases).¹¹¹ In these terms, the present study is a 'focused comparison' of two cases, namely New Zealand and the Northern Territory of Australia.

Comparative public policy: strengths and weaknesses

Antal (1987) identifies a number of ways in which comparative or cross-national policy research can be useful. These include: 'the collection of information for the relatively direct transfer of models from one setting to another, the achievement of a better understanding of foreign partners and the opening of new perspectives on ones own country'.¹¹² She points out that cross-national research can provide insights into the nature of a specific problem and alternative ways of handling it, as well as into the general nature of a system. However both Antal (1987), and Adams and Winston (1980) concur that increasingly it is accepted that utility of cross-national policy research lies far more in giving greater insight into one's own country than in providing ready-made models with immediate 'turn-key' transferability. The latter authors put it like this:

*The value of comparative policy analysis lies not so much in its ability to uncover workable alternatives from other societies as in its contribution to understanding our own system ... One of the most positive functions of comparative research is to highlight the prevailing assumptions that structure public debate over certain issues in our own system.*¹¹³

It is nevertheless true that countries frequently examine each others' experience and borrow and adapt policies from each other. The present study is an example of this. In both jurisdictions, the Northern Territory and New Zealand, use was made in the process of policy formation of cross-national and/or comparative studies. Indeed, in the New Zealand case direct Parliamentary reference was made to the mandatory reporting situation in the Northern Territory as the result of a cross-Tasman inquiry visit to the Northern Territory made by the New Zealand Member of Parliament, Judy

¹¹¹ Harrop (1992: 5).

¹¹² Antal, A.B. (1987).

¹¹³ Adams and Winston (1980: 17).

Keall.¹¹⁴ Finding this serendipitous, factual, and topic-related linkage between the two jurisdictions here under study was a charming quirk of the research process.

Comparative research presents a number of advantages, the first of which is that it encourages the researcher to distinguish between the general and the specific. The aim is to tease out what is the case for all the countries or jurisdictions under study and what is unique to each.¹¹⁵ Secondly, comparisons in social policy widen our awareness about policy options and their range. This throws into relief the policies, questions the underlying assumptions about them, and raises functional issues of how and why these policies are maintained in their setting. A third advantage is so-called 'lesson-learning' where one nation can learn from the experience of other, however as noted below this is potentially hazardous. Fourthly, historical and cross national comparison permits researchers to identify and evaluate fashions or trends in social policy that would otherwise not be evident. For Higgins:

*The overall advantage of comparison in social policy is that it permits the researcher to identify the social determinants of policy and to differentiate culturally specific causes, variables, institutional arrangements and outcomes and those which are characteristic of different systems and different countries.*¹¹⁶

There are also a number of limitations of the tradition. Higgins dismisses as unsophisticated, the first of these, which invokes the so-called 'law of comparative difference', to the effect that if nations differ they cannot learn from each other and comparison is futile. A more serious critique is based upon a perception that in the past, comparative studies in social policy have been weak or lacking in theory and analysis. This is to make the point that mere description alone does not permit researcher or reader to draw wider conclusions to generalize or to develop key theoretical concepts, which can guide further research. Higgins writes:

*Thus although case studies can be interesting in themselves, the possibilities of explanation, generalization and analysis are limited unless they can be set in a conceptual and theoretical framework which permits a broader view.*¹¹⁷

Finding the correct symmetry between description and analysis has been described as the 'key problem' in comparative studies.¹¹⁸ The more so in a specifically historical

¹¹⁴ NZP (1994), PD 539: 4726 [Judy Keall].

¹¹⁵ This discussion of advantages and limitations largely follows Higgins (1981: 12-20).

¹¹⁶ Higgins (1981: 20).

¹¹⁷ Higgins (1981: 16).

¹¹⁸ Ibid.

study such as the present one which aims to document policy processes in two jurisdictions and thereby gives prominence to the descriptive task.

Other limitations of comparative social policy analysis exist. The first of these has been briefly already alluded to above: the definitional problems caused by debate or confusion over what is to count as policy (including the vexed issue of whether government *inaction* is ever policy), and where the boundaries of different types of policies lie and whether these boundaries match (often they don't) from country to country. Next, there are problems of scope and methodology – what to compare and how to compare. Finally, there are issues of competence – whether researchers have all the necessary complex skills to perform adequate cross-national research where there are often major linguistic and cultural differences to transcend. A factor not mentioned above is the question of resources: clearly in-depth cross-national research is potentially an expensive and time-consuming exercise.

In conclusion, the comparative tradition has much to offer in the study of social policy studies. Despite the numerous substantive and methodological challenges presented by comparative studies and the weaknesses identified, it does have numerous strengths. In particular, it requires researchers to lift their heads, as it were, and to look over the horizon. As Carrier and Kendall note, the comparative method can play a part in rectifying some of the difficulties which arise in single-nation studies of social policy development.¹¹⁹ Such difficulties include over-simplified, single-cause explanations, accounting for policy choices in terms of the actions of singular influential individuals, the construction and reification of artificially imposed time-frames and 'turning points', and explanations based on deductions from ideological positions held *a priori*.

A key value of comparative study is that it prompts questions that would not otherwise have occurred to the investigator. This is as well, for in the modern world no country stands entirely alone and it is not possible to understand what occurs in one country in complete isolation from what occurs in others.

The Research Method

This research project is a descriptive, focused, qualitative, document-based study using comparative methodology to compare and contrast the origins of divergent

¹¹⁹ Carrier and Kendall (1977: 271-290).

policy options adopted in an Australian jurisdiction and in New Zealand. The methodology therefore has drawn on the techniques of documentary research and the comparative tradition in social policy analysis.

Sarantakos (1993) and others have identified the following broad stages or procedures in documentary research.¹²⁰ First, there must be identification of the topic and the data needed to adequately deal with the problem. Once it is established that the data exists and is available, the known information is collected. Other data located as it becomes available. The data is then organized and analyzed. This is usually done by writing the report, with several drafts following as additional clarification and information is sought to cover gaps in knowledge and understanding. As part of this process the information obtained needs to be evaluated and employed in terms of its relevance to the goals and assumptions of the study. The final phase is the interpretation of the significance of the data and, to the extent possible in light of the methodology employed the drawing of any applicable conclusions or generalizations.

Application to this study

Similar steps were applied in the present study. In the first place formulation of what any study is about and is designed to achieve, is clearly critical to good research design. These goals have already been outlined in Chapter one together with a statement of the research questions and assumptions made in this research project.

A basic method of documentary research was followed. The first stage in the process was to set out the information requirements of the study and to make a preliminary identification of potentially relevant documents. These were documents likely to contain material pertinent to the answering of the research questions. These included the complete transcripts of the Parliamentary Debates on proposals to amend the reporting law in each jurisdiction; copies of the Reports of the welfare enquires that preceded the introduction of legislative amendments; Select Committee reports, information available in the public domain on internal Government reports, and any related research. Subsequently, material gleaned from Departmental files in both jurisdictions was included. Then followed actual physical collection of this data set.

¹²⁰ For example , Sarantakos (1993), Burns (2000).

The next step was to read, analyze and take notes from each document and to evaluate which parts and points in each were relevant to the research questions. The documents were considered both in terms of reconstructing the actual process of policy formation in each jurisdiction from the historical record, and for identifying reasons for the particular course followed in each territory. At this point recognition of similarities and differences in the two processes became possible. The final step was making explicit comparisons between the development of policy in the two jurisdictions, and interpreting the reasons for the different outcome in each.

Clearly, the sequence described above is not a purely linear process but one characterized by loops and recurrences. Work at one level stimulated the search for further, perhaps previously unknown documentation. Events, issues or complications discovered in the course of reading already-gathered material prompted the researcher to search for elaboration or clarification of such matters.

An example of the former process of seeking entirely new information was the need to read through the actual submissions to the New Zealand Select Committee. This data had not been gathered in the initial sweep due to the fact that official summaries of it were available elsewhere. An example of the clarification-seeking process, was the need to research further in order to explain an apparent political short-circuiting of the extensive Inter-departmental policy analysis project set up to advise the New Zealand Government on mandatory reporting. This had occurred when the decision was made to introduce legislation providing for mandatory reporting prior to the completion of the policy analysis project's programme of work.

In the Northern Territory research, a similar recursion occurred when it was considered necessary to further research changes to the composition of the Cabinet in 1982, in order to clarify an apparent mid-stream policy shift. It emerged that a Cabinet re-shuffle had taken place. This discovery helped to elucidate a sudden sea-change in policy towards mandatory reporting evident in, but not explained by, file documents.

Ethical requirements and other challenges

In both the Northern Territory and New Zealand research it was necessary to obtain official approval to access the relevant Departmental files for the purposes of this study. In addition, New Zealand authorities required vetting of the New Zealand

chapters in order to ensure that the requirements of New Zealand privacy and official information legislation were met.

The main research challenge was to become familiar with a very large amount of material in the Northern Territory and New Zealand Departmental files. It was most important to ensure, as far as possible, that adequate coverage of key material had been obtained and at the same time to distinguish between what material was relevant and what irrelevant or only tangential to the research questions of the study. This was made more difficult by the fact that I was living in China for three years which made necessary visits to New Zealand and Australia to obtain or check data.

At times reliance on documentary material only, proved frustrating. However, despite the fact that their information would have been of considerable interest and relevance, the temptation to move beyond the documentary method by interviewing key participants in the processes, had to be resisted in order to keep the study within already strained bounds.

Having completed the description of the methodological approaches employed in this study, the next chapter commences the presentation of the case-study material from the Northern Territory of Australia.

CHAPTER FOUR

THE GENESIS OF A NORTHERN TERRITORY POLICY: FROM POLICY DEBATE TO LEGAL INSTRUMENT

INTRODUCTION

Why did the Northern Territory adopt mandatory reporting and what does the documentary evidence tell us about the manner of policy-making? It will be recalled that this study asks about the means and considerations which led each Government to accept or reject legislation on mandatory reporting, and how far research undertaken and advice given was influential in the political debate. In addition, it aims to assess the extent to which the respective legislative debates themselves determined the policy outcomes and what these debates reveal of the underlying policy-formation process. All of which is foundational to explaining the eventual adoption of different policy outcomes in the two jurisdictions.

Therefore, this chapter and the two which follow examine the background to the eventual enactment of the *Child Welfare Amendment Bill 1982*, the law which provided for mandatory reporting of child maltreatment in the Northern Territory. An account of the events which led to the tabling of the *Amendment Bill* is followed by a detailed examination of the legislative record of debate. The Legislative Assembly record is examined against what is known from extra-parliamentary documentary sources, such as Departmental files, to see how far it reveals the policy development process which produced the policy on mandatory reporting. In particular, whether this parliamentary policy-making process marked a continuation of development of policy or was instead merely a ‘rubber stamping’ of an essentially already completed project. In order to compare the two policy journeys, in the Northern Territory and New Zealand, a similar analysis will later be applied to the New Zealand situation.

The analysis of the Northern Territory policy journey towards the adoption of mandatory reporting focuses on a number of key factors pertinent to the debate and offers an assessment of the degree to which the debate was informed by them. These are: the context of the debate, the issues identified, and arguments adopted, costs and benefits, evidence adduced, advice received, consultation processes, and community support or opposition to the measure. An historical overview of background to social welfare and child welfare reform in the Northern Territory and

the events leading up to the introduction of the *Amendment Bill* is provided to aid understanding of the genesis of the Northern Territory's mandatory reporting policy. An attempt is made to convey, in some measure, the 'premature' nature of the introduction of mandatory reporting in Northern Territory considered in the context of the main thrust of Northern Territory Child Welfare reform, which began in 1978 and eventually culminated five years later in the *Community Welfare Act 1983*.

Historical background

The Northern Territory of Australia, with its main centre in Darwin in the North and extending past Alice Springs to the South, covers some 1,346,200 square kilometers. It is the third largest of the Australian States and Territories, but has the smallest population and population density. In 1979 the population was estimated to be 105,000 of whom 25% were Aborigines.¹²¹ By 2000 this figure had grown to approximately 193,000.¹²²

On July 1 1978, by an Act of the Federal Parliament of Australia (*Northern Territory (Self-Government) Act 1978, Cth.* the Northern Territory became a self-governing jurisdiction). This gave the Territory State-like responsibility for the administration of features of government including Social Welfare and Child Protection. With the formation of a Northern Territory Government the Territory was less subject to the direct control of the Canberra-based Central Government.

Immediately prior to attaining self-government responsibility for welfare services in the Territory was held by the Social Development Division of the Department of the Northern Territory, a branch of the Federal Government. Following self-government, a Community Welfare Division of the newly-formed Northern Territory Department of Community Development was established with responsibility for administering a number of pieces of welfare legislation including that covering child protection services.¹²³

Child welfare

At the time of attaining self-government the main legislative measure affecting child-welfare in the Northern Territory was the long-standing *Child Welfare Ordinance*

¹²¹ 'The Welfare Needs of the Northern Territory Community: A Report of a Board of Inquiry', Darwin, August 29, (1979: 3).

¹²² Australian Bureau of Statistics, (2000), Northern Territory at a Glance, Commonwealth of Australia, (2000).

¹²³ Annual Report, NTDCD (1978: 14).

(1958-73, *Part v.*). This measure was described by one senior official as 'old and patched'.¹²⁴ It did not specifically address the reporting of child abuse and certainly did not require any person to report a case of child abuse to the authorities.¹²⁵ Even as self-government approached, there had been an appreciation in political and administrative circles of the need to reform the Territory's welfare services. However, it was not until late in 1983, some five years later, that a total revision of the Territory's child welfare legislation came into effect with the adoption of the Northern Territory *Community Welfare Act 1983*. It is important to appreciate that this was *not* the measure which made mandatory reporting of child abuse part of the law of the Northern Territory, despite common assumptions to the contrary.¹²⁶ In fact, mandatory reporting was introduced by way of a special amendment to *The Child Welfare Act* in June 1982, nearly a full year and a half before the commencement of its replacement, the *Community Welfare Act*.

The Martin Committee Report

In order to obtain an understanding of the particular circumstances in which the policy of mandatory reporting came to be given legal force in the Northern Territory, it is necessary to examine aspects of the history of welfare reform in the Territory. The major reform of Northern Territory Welfare legislation, eventually embodied in the *Community Welfare Act, 1983*, originated on the eve of self-government when on the 15th June 1978, the Northern Territory Legislative Assembly unanimously accepted a motion to establish a Board of Inquiry into the Welfare Needs of the Northern Territory Community. This Board, known as the 'Martin Committee', was to inquire into all aspects of the welfare needs of the Northern Territory community and the policies, legislation and resources to meet those needs'.¹²⁷ The Committee consulted widely throughout the Territory and received more than 124 submissions. It made 153 recommendations in the 259-page Martin Report tabled in the Legislative Assembly in September, 1979.¹²⁸ The Martin Committee recommended that the existing *Social Welfare Ordinance* should be repealed and replaced because it was

¹²⁴ Memorandum dated 18 January 1979, DCD File, N85/0675, 'Child Welfare Act Amendments', Folio 33.

¹²⁵ DoH File, 84/346, 'Child Abuse', Folio 74.

¹²⁶ In my own experience as a social work practitioner in the Northern Territory working under the authority of the Community Welfare Act 1983, I frequently encountered this misconception.

¹²⁷ 'The Welfare Needs of the Northern Territory Community: A Report of a Board of Inquiry', Darwin, August 29, (1979: 1).

¹²⁸ DCD File CW84/151/D, 'Community Welfare Act and Juvenile Justice Act - Implementation', Folio 79.

based upon outmoded concepts, did not express any overall policy, and was wholly remedial in its approach. The Board unanimously recommended repeal of the existing *Social Welfare Ordinance* and introduction of 'a new Act to promote individual family and community welfare'.¹²⁹ In other words there was seen to be a need for considerable change in the legal basis of welfare provision in the Territory.

Specifically with regard to child welfare, the Committee concluded that there was a need for a new approach in order to identify and coordinate the steps to meet the needs of children and to secure increased participation in programmes aimed at meeting those needs. Their Report acknowledged that many of their proposals required changes to existing legislation. In addition, it saw the numerous reviews of welfare laws then taking place throughout Australia as providing an 'opportunity to focus on the introduction of model legislation embodying the best principles and practices applying to child welfare'.¹³⁰

The Martin Committee reported wide acknowledgement of the fact that the Northern Territory child welfare legislation needed updating. The Committee's 17 recommendations on the subject of child welfare included proposals that the Territory Government establish and promulgate a Child Welfare Policy; that a Child Life Protection Unit be established based on study of similar units in the Australian States, and that the principles and practices recommended in the Report be included in a new Child Welfare Act.

Apart from these general recommendations the Martin Committee Report did not go into detail on matters of child protection. There is however evidence that within the administration awareness of the need for welfare reform prior to self-government extended to, and included, matters of child welfare and child protection. For example, in May 1977, in an Internal Minute to the administrative Head of the Department, the Assistant Secretary for Social Development noted that he had for some time 'been aware of the deficiencies of the Northern Territory child-welfare ordinance in all its ramifications' but considered that further time was needed 'to give the matter the attention it deserved in order to prepare the substantial amendments necessary if the

¹²⁹ Quoted in background notes on the 'History of the Community Welfare and Juvenile Justice Acts', DCD File, CW84/151/D, 'Community Welfare Act and Juvenile Justice Act - Implementation', Folios 78-79.

¹³⁰ 'The Welfare Needs of the Northern Territory Community: A Report of a Board of Inquiry', Darwin, August 29, (1979: 1).

Ordinance was to be brought into line with modern thinking about child welfare'.¹³¹ It was also noted that such legislation 'needs to take account of community experience (and) is best based on contributions from the community itself'.¹³² The memorandum suggested the appointment of 'a select committee of the Legislative Assembly to make the necessary arrangements and provide the opportunity for submissions, or an Inquiry under the Inquiries Ordinance. Finally, it recommended 'that the question of establishing a Select Committee of the Northern Territory Legislative Assembly to investigate the Child Welfare Ordinance with a view to providing draft instruction leading to the adoption of a new ordinance be taken up (with the Minister) at early date'.¹³³ It does not appear that this last proposal made any real progress.¹³⁴

Continuing pressure for change

Pressure for change continued to emanate from within the Government bureaucracy although perhaps in a fairly leisurely fashion. In October 1977, a public seminar on child abuse sponsored by the Social Development Branch of the Northern Territory Government was held in Darwin. At the seminar several papers were presented, including one by the majority leader of the Legislative Assembly, who was later Minister of Community Development, and was Chief Minister of the Northern Territory when mandatory reporting was introduced, called 'Policy and Practice and Protection of Children'. Other papers were entitled 'Modern Attitudes to Child Welfare', 'The Doctor's Role in Child Abuse', and 'Child Abuse and the Law'. The extensive recommendations which followed from the seminar included one which stated that, following South Australia, it should be compulsory to report non-accidental physical injuries. In addition, it should be compulsory for doctors and dentists, but also for registered nurses, social workers, registered teachers, kindergarten and preschool teachers, members of the Police Force, and child care workers to notify cases of maltreatment. Legal immunity should be extended to every person who made a notification on 'reasonable' grounds.¹³⁵

¹³¹ Memo dated 4 May 1977, DCD file, 'N85/0675', Child Welfare Act Amendments', Folio 26.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ This was also the confirmed view of the DoH, refer Memorandum from Secretary for Health to Minister for Health on 'Child Abuse' dated 16 August 1981; 4 May 1977, DCD file, DoH File 82/876, Child Abuse Seminars and Correspondence, Folio 84.

¹³⁵ DoH File 82/876, Child Abuse - Seminars and Correspondence, Folios 36-37.

A further year had passed when in November 1978, representatives of the Northern Territory including a Stipendiary Magistrate and an Officer of the Department of Community Development, attended an Inter-state 'Workshop on Child Abuse' in Sydney where all States and Territories of Australia were represented. A paper describing the current situation with regard to child abuse and neglect in Northern Territory was presented.¹³⁶ The paper acknowledged that 'to-date child abuse/neglect in the Northern Territory is something of an unknown quantity'. It reported that work in the area had been of an *ad hoc* nature and that current system pointed to a lack of coordination, legislation and formalized procedures. In past years the Community Welfare Division's involvement had been directed at casework intervention and any necessary follow-up through the judicial process. The paper considered it necessary for the current legislation to be reviewed in preparation for proposed *Community Welfare Act* to allow scope for future development.¹³⁷

Another Government-led initiative to modernize the approach to child protection at this time was the formation in December 1978 of the 'Child Protection Consultative Committee' under the Chairmanship of a Magistrate and consisting of representatives from the Departments of Health, Education, Community Development and the Police. The Committee was to have oversight of child protection interventions; to provide resource people for intervention; to ensure follow up and to obtain reports from officers involved; to stimulate community education; to provide information on services available, and to make recommendations regarding development of policy and services in the field.¹³⁸

Reflecting on this period, a 1985 Departmental report, which recommended the Committee's dissolution, stated that:

*In the absence of adequate child protection legislation, departmental policies, interdepartmental cooperation and community awareness (the Committee) had a definite function. From 1980-83, the Committee was able to make a valuable contribution in meeting these deficiencies, and assisting in the development of policies, which are now in operation ... Since the Community Welfare Act came into force, the Committee no longer sees its existence as necessary ...*¹³⁹

¹³⁶ DoH File F6, SWAMC - Mandatory Reporting of Child Abuse, H83/0918, unnumbered folio.

¹³⁷ Ibid.

¹³⁸ DoH File, 84/0076, 'Child Abuse and Child Protection', Folio 187.

¹³⁹ DoH File, 84/0076, 'Child Abuse and Child Protection', Folio 187.

It is of interest that the Committee did not appear to play a strong role in either the development or adoption of the Territory's eventual policy of mandatory reporting of child maltreatment.¹⁴⁰ Evidently it did not see itself as having a role in policy development but rather one of improving the management of the existing voluntary reporting system. And in fact the Minister of Community Development appeared as late as October 1981 to be placing considerable trust in the role of the Committee as agent and vehicle of the alternative, voluntaristic-educative policy approach to the issue of child abuse reporting.¹⁴¹

The Annual Reports of the Department in the period 1978 to 1983 show an increasing pace of activity directed towards establishing a new Child Welfare Policy for the Northern Territory. The 1978 Report of the Department of Community Development stated, 'the extent of actual abuse or neglect in the Northern Territory is not known as at present there is no central register or compulsory notification of such cases ... Child protection services are still in early developmental stage in the Territory'.¹⁴² At that stage, however there was certainly no suggestion that the introduction of mandatory reporting of suspected child abuse would be a suitable strategy for improving child abuse statistics in the Northern Territory.

In February 1980, the Government through the Department of Community Development initiated an intensive review of legislation. The review project's objective was to be the formulation of new legislation in the areas of family services, childcare and protection, income maintenance and juvenile justice.¹⁴³ A year later in 1981, it was again reported that a major activity of the Department during the year was a review of the social welfare and child welfare laws 'with a view to updating provisions'.¹⁴⁴ This involved employment of a project team for a period of four months

¹⁴⁰ For example, the minutes of a committee meeting held on 6 May 1982 where the draft amendments to the Child Welfare Ordinance were tabled and discussed, laconically note, 'The draft if settled would make reporting of Child Abuse mandatory. Discussion followed on the pros and cons of the Draft', DoH File, NR84/346, 'Child Abuse', Folio 9.

¹⁴¹ DoH File 82/876, 'Child Abuse - Seminars and Correspondence', Folio 84.

¹⁴² 1978 Annual Report, NTDCD, 53.

¹⁴³ DCD File CW84/151/D, 'Community Welfare Act and Juvenile Justice Act – Implementation', Folio 78.

¹⁴⁴ 1980-81 Annual Report, NTDCD, 6.

and the engagement of consultants from the Voluntary sector¹⁴⁵ and from the University of Melbourne. Draft proposals for replacement legislation were produced by the end of 1981.

During 1982, preparations for the new legislation continued. The Department reported that the child protection programme had made important and significant strides in its endeavor to plan, develop and implement a child protection service.¹⁴⁶ Progress continued and the 1983 Departmental Report stated that tabling of draft *Community Welfare and Juvenile Justice Amendment Bills* in the Legislative Assembly in March 1983 was the culmination of a comprehensive review of Northern Territory Welfare Legislation which had begun with the appointment of the Board of Inquiry into the Welfare Needs of the Northern Territory Community in 1978 (the Martin Committee).¹⁴⁷ From a Departmental point of view the stage had been set after five years of preparatory work for a considered introduction of reporting legislation in the Northern Territory, and this included consideration of the question of mandatory reporting.

Evidence from administrative files

Beyond the broad outlines given in Annual Reports, there is further, more detailed evidence to support this claim that the Government's welfare reform programme extended to matters of child welfare and child protection, including consideration of the policy of mandatory reporting of child abuse. An inspection of selected administrative files from both the Department of Health and the Department of Community Development¹⁴⁸ shows that as part of the review of legislation undertaken by the latter Department, the question of whether proposed new child protection legislation for the Territory should include mandatory reporting of child abuse was a live one from an early date.

¹⁴⁵ The voluntary sector consultant was from the Brotherhood of St Laurence, a major child welfare research and advocacy organization based in Victoria, which later, in 1988, produced a major study on Mandatory Reporting and Child Abuse which was referred to extensively by New Zealand DSW researchers preparing advice for government on possible reforms to the New Zealand child protection legislation. (See Chapter 8 below).

¹⁴⁶ Annual Report, DCD for year ending 30 June (1982: v. and 30).

¹⁴⁷ Annual Report, DCD for year ending 30 June (1983: 35 and 37).

¹⁴⁸ These departments were subsequently merged and their files consolidated in the archives of the new Department of Territory Health Services.

In late 1979 a Community Health Social Worker, for example, had submitted an overview report from a health perspective to Health Department management. It highlighted many of the deficiencies of the existing child abuse management regime and pointed to the coordination and communication problems which had arisen from the number and range of departments and agencies involved in child abuse.¹⁴⁹ The Report recommended that, irrespective of what the Community Welfare Division of the Department of Community Development proposed, there was a need for Health authorities to develop more adequate operational guidelines and policies. These included making recommendations on issues such as mandatory reporting of child abuse.¹⁵⁰ This may have been an early sign of possibly different agendas at work between Health and Social Welfare Ministries on the issue.

In 1980, a discussion paper on the notification of child abuse was prepared within the Department of Community Development summarizing *inter alia* the arguments assembled by the Australian Law Reform Commission Discussion Paper No. 12 'Child Welfare'¹⁵¹ for and against mandatory reporting. The distribution list attached to the paper indicated that it was widely circulated for discussion within the Department.¹⁵²

The Government's intention to consult widely in the process of preparing for the proposed new Community Welfare Act legislation was evident from the beginning. The record of wide consultations surrounding the Martin Report has already been mentioned previously, as have the ideas of the Assistant Secretary for Community Development in 1979 for the setting up of a further Inquiry or a Select Committee process regarding child protection reform. But as also noted, no progress was seen to have been made in this latter direction.

Even by the time the *Child Welfare Amendment Bill* was introduced into the House in March 1982 major public consultations of either a more general welfare, or a more specific child protection nature, do not appear to have got underway. Nevertheless, extensive public consultations were later launched in respect of the *Community Welfare Amendment Bill 1983* both before, and especially following, its tabling in

¹⁴⁹ At a minimum these were Police, Health, Education, Law and Community Development.

¹⁵⁰ DoH File, 84/346, 'Child Abuse', Folios 70-72.

¹⁵¹ ALRC(1981) *Report on Child Welfare*, No. 18, AGPS, Canberra.

¹⁵² DCD File CN83/0066, 'Introduction of Mandatory Reporting', Folios 31-34.

Legislative Assembly in the middle of 1983.¹⁵³ But examination of the introduction and progress of the 1983 *Amendment Bill* goes beyond the scope of this study. Our focus is on the earlier and more restricted piece of legislation, the *Child Welfare Amendment Bill 1982* which was constructed under some urgency, in response to a particular highly-publicized case of child abuse. Significantly, such formal consultations as did occur in respect of the mandatory reporting policy prior to and following the introduction of the *Amendment Bill* were internal to the governmental bureaucracy. These are discussed in the next section below and in the discussion of events following the introduction of the *Amendment Bill* in March 1982.

Inter-departmental consultations about the reporting of child abuse

In terms of consultation about reporting of child abuse in preparation for the proposed general reform of welfare legislation one of the few documentary records located was correspondence in mid-1980 from a Project Officer within the Department of Community Development who, while preparing drafting instructions for the new Community Welfare Legislation, sought comments from the Department of Health on possible reporting provisions.¹⁵⁴ The response received indicated that while the Health sector had considerable involvement in the field there was also support for the Community Welfare Division to take on a more clearly defined statutory responsibility, with the caveat that 'there was little point in taking stronger Legislative measures without a level of expertise and experience in relevant staff to provide the implementation of such measures'.¹⁵⁵ A future role seen for Department of Health staff was to provide consultation services, follow-up of specific cases, and the provision of child abuse awareness training. There was no evidence in that response of any of the subsequent tension which became evident between the Health and Community Development Departments over the proposed reform of the child welfare legislation and the question of mandatory reporting.

Consultations continued in August when Health Department representatives were invited by the Project Team to attend seminars 'for general discussions with people of other relevant agencies'. One attendee found these seminars to be only 'of marginal interest' to the functions of the Health Department.¹⁵⁶ Further Inter-

¹⁵³ NTLA 1983, PR: 274.

¹⁵⁴ DoH File, 84/346, 'Child Abuse', Folio 89.

¹⁵⁵ DoH File, 84/346, 'Child Abuse', Folios 84-86.

¹⁵⁶ DoH File 82/876, 'Child Abuse - Seminars and Correspondence', Folio 89.

departmental consultations took place later in the month, where more substantive issues were explored. A Department of Health report on these discussions included notes recording that the necessity for legislation to achieve inter-agency cooperation had been questioned, and concern expressed over the role, geographical coverage and expertise of the proposed Child Protection Teams. Other matters discussed included the locus of responsibility for investigating cases and reviewing management plans, with one participant expressing a fear 'that ill-informed interference in the management of a case by a skilled social worker might lead to the detriment of 'patients'¹⁵⁷. Also considered was the point at which a report should be made', e.g. should a medical practitioner report a suspected case of child abuse ... when it was within his (*sic*) competence to overcome the problem and when interference from outside may jeopardize the success of his handling of the case'.¹⁵⁸

Another issue was confidentiality in the doctor/patient, social worker/client relationship. In regard to the matter of mandatory reporting it was felt by the Health authorities that there was a need for greater information. It was mentioned that medical practitioners might feel they were breaking patient confidentiality in making a report. There was unanimous endorsement for legal immunities for genuine reporters. That is, a person making a report of suspected child abuse in good faith should be protected from prosecution. There was concern expressed about potentially increased costs and workload for the Health Department if the role of the proposed Child Protection Teams was not clearly defined and if the Department of Community Development was not given clear statutory responsibility for child abuse management.¹⁵⁹ In the tone and language of some of these concerns can be detected the cultural voice of institutional medicine with emphasis on issues of professional competence and confidentiality, the doctor as the guardian of 'patients' rights, and concern about territorial invasion or 'interference' from other specialties such as Social Work.

However, in a Memorandum formally communicating certain of their concerns to the Project Team, the Department of Health did come out in support of mandatory reporting:

¹⁵⁷ DoH File 82/876, 'Child Abuse - Seminars and Correspondence', Folio 52.

¹⁵⁸ DoH File 82/876, 'Child Abuse - Seminars and Correspondence', Folios 55-56.

¹⁵⁹ DoH File 82/876, 'Child Abuse- Seminars and Correspondence', Folios 51-53.

It is agreed that mandatory reporting by specific people is desirable to amass the basic information required. Persons making such reports in good faith must be legally protected. It is obvious that the persons who will be specified in this way will require further discussion. Medical practitioners may consider such reporting to be a breach of confidence. Acceptance of such a provision will depend on the definition of when such a report becomes necessary. The threat to the confidential relationship upon which the success of the social worker/client relationship is based should not be overlooked.¹⁶⁰

The spokesman of the Project responded to matters raised by this Health Department memorandum by clarifying the role of inter-disciplinary Child Protection Teams under the proposed legislation. With regard to mandatory reporting, it was confirmed that the requirement to report would apply to certain professional groups only and that persons making a report would have legal immunity from prosecution. The following advice regarding a staged implementation of the proposed law, to be reiterated in Departmental advice in 1982,¹⁶¹ was then communicated:

It is proposed that the sections of the bill covering mandatory notification shall not come into operation for a period of time during which information about their rights and responsibilities shall be given to those people whom (sic) are required by the act to notify. People will be required to notify when they suspect on reasonable grounds that child maltreatment has occurred or is continuing to occur.¹⁶²

Despite the Health Department having formally agreed to its introduction, there was still perhaps some residual uneasiness in medical circles about mandatory reporting. In later thanking the Project Team for that clarification, the Deputy Secretary for Health wrote:

The mandatory notification of suspicion of child abuse is a difficult concept. How can it be enforced? Your suggestion of a programme of education is laudable but I suspect that community attitudes may have to be changed.¹⁶³

Political interest in the progress of the planned legislation remained. In the Legislative Assembly earlier in the year a Member asked the Minister for Community Development. 'When will the Child Welfare Amendment Bill, which has been under

¹⁶⁰ DoH File 82/876, 'Child Abuse- Seminars and Correspondence', Folios 55-56.

¹⁶¹ DCD File CN83/0066, 'Child Protection - Introduction of Mandatory Reporting', Folios 23-25.

¹⁶² DoH File 82/876, 'Child Abuse- Seminars and Correspondence', Folio 57.

¹⁶³ DoH File 82/876, 'Child Abuse- Seminars and Correspondence', Folio 59.

preparation for some time, be introduced into the Assembly?'¹⁶⁴ In reply the Minister advised that he could not give a specific date but that his Department was putting a great deal of effort into the *Child Welfare Amendment Bill*,¹⁶⁵ which he said was complex and sensitive and was being discussed by various people within the Government. He believed the Department was also consulting with people outside the Government and stated that the matter would be put before Cabinet as soon as practical and that there was certainly no intention whatsoever by the Government to delay the matter.¹⁶⁶

Comparison with other States

In a Federal system such as Australia policy approaches and developments in one State will inevitably be noted by policy-makers in other States and Territories and the Northern Territory is no exception. A paper prepared by the Northern Territory Department of Community Development for the 1981 Australian Social Welfare Administrators Conference analyzed how other States dealt with the issue of mandatory reporting of child maltreatment in their legislation. It summarized arguments for and against mandatory reporting, and pointed out that forthcoming child welfare legislation in Northern Territory *might* include mandatory reporting of child maltreatment. It stated that mandatory reporting of child maltreatment was favoured by the Northern Territory Department of Community Development.¹⁶⁷ This is worth noting because the Department later became strongly opposed to mandatory reporting for the Northern Territory.

Although there is no direct documentary evidence to show what occasioned this change of mind it is interesting to note that the Departmental files examined in this study contain a number of academic articles and research reports, which were, presumably, used to inform thinking, and may have been the basis of professional discussion and advice within both the Departments of Health and Education as

¹⁶⁴ Northern Territory Hansard, Questions Without Notice, 25 February (1981: 125).

¹⁶⁵ Did the Minister mean the '*Child Welfare Amendment Bill*' or the '*Community Welfare Amendment Bill*'? I suspect the latter.

¹⁶⁶ NTLA1981, PR: 125 (Questions Without Notice, 25 February 1981, question of Mrs. O'Neil).

¹⁶⁷ DCD File N83/0066 'Child Protection Introduction of Mandatory Reporting': 93-94.

legislation was prepared and consultations took place.¹⁶⁸ A number of these papers refer in particular to child welfare and child abuse studies conducted by the Australian Law Reform Commission which were also on Departmental files.¹⁶⁹

Epilogue

On August 8, 1981 a most tragic event occurred which was to radically alter the pace and, at least temporarily, the focus, of the reform process. Dean Philip Long,¹⁷⁰ a four-year-old child was reported missing from his home in a northern suburb of Darwin and a massive search for him ensued. As reported by the Territory's chief newspaper, the *Northern Territory News*, one of the largest mass-searches ever was organized in Darwin.¹⁷¹ At times the search involved up to 300 personnel. It generated considerable media publicity. Two days later the boy's stepfather was charged with Dean's murder. Two other persons, including the boy's mother, were charged with being accessories to murder. The committal hearing, which was front-page news in the *Northern Territory News*, opened on October 29th 1981.¹⁷²

During the course of the trial many grisly details of parental abuse were given in evidence. The Press reported medical evidence given by a hospital medical practitioner who had seen Dean on two occasions in the month before his death and who had been suspicious that injuries suffered by Dean had not been accidentally sustained. Another doctor had examined Dean on a third occasion in late July when the child had displayed a further injury. The Coroner's Report issued on the 1st day of June the following year, 1982, recorded that Dean Long died on or about 8 August 1981 at Darwin, and that his death was caused by a ruptured spleen. On 11 February 1982, Dean's step-father was convicted by a jury in the Supreme Court in Darwin on a charge of manslaughter arising out of the death of the deceased, and was sentenced to a term of imprisonment.¹⁷³

¹⁶⁸ For example, DoH File NR 84/346 Child Abuse 'which contains at Folios 58- 67 the articles: Collingridge, M, 'Child Abuse: Should reporting be compulsory?', *Legal Service Bulletin*, April 1977, 213-215; Folsham, J. 'The Case Against Mandatory Reporting' and Gurry, Dr Desmond, 'The Doctor as Detective', unreferenced.

¹⁶⁹ ALRC(1981) Discussion Paper No.12 *Child Abuse and Day Care*, Canberra; ALRC(1981) *Report on Child Welfare*, No. 18, AGPS, Canberra

¹⁷⁰ Also known as 'Dean Shipley'.

¹⁷¹ Northern Territory News, August 10, (1981: 1).

¹⁷² Northern Territory News, October 29th (1981: 1).

¹⁷³ Coroner's report dated 1 June 1982. By a strange quirk, this was the very day the *Child Welfare Amendment Bill 1982* received its final reading and was enacted by the Northern Territory Legislative Assembly.

Of some significance for the later course of the debate about mandatory reporting in the Northern Territory was the fact that neither of the doctors had reported Dean Long's injuries to the child welfare authorities.

The next chapter examines the immediate bureaucratic and political consequences of Dean Long's death.

CHAPTER FIVE

THE DEATH OF DEAN LONG AND THE AMENDMENT OF THE CHILD WELFARE ACT

INTROUODCTION

This chapter traces events in the immediate aftermath of Dean Long's death up to the point at which a *Amendment Bill* to introduce mandatory reporting was tabled in the Northern Territory Legislative Assembly. It shows that in the lead up to the legislation there remained considerable differences of opinion between key advisory departments, between their Ministers, and between the Department of Community Development and its Minister.

During this period a Cabinet reshuffle led to the appointment of a new Minister of Community Development strongly in favour of mandatory reporting. Nevertheless, his Department continued to oppose the policy on resource and efficiency grounds. However, when it became plain that the Minister was determined that mandatory reporting should appear in legislation, Departmental Officials gave up their opposition and provided policy advice consistent with the Minister's position.

A child's death brings a sense of urgency

The publicity and shock of Dean Long's death appears to have been a galvanizing event. Nothing of this nature had been so widely reported previously in the Northern territory although in the nature of things deaths of children as the result of abuse had probably occurred in the Northern Territory in the past. Upon receiving news of Dean Long's death the Minister of Health called urgently for a Briefing Paper on child abuse from his Department. The report was supplied to him six days later on the 14th August 1981. Shortly afterwards, on 25th August 1981, he wrote to the Minister for Community Development stating that 'recent events in the Territory' had caused him to 'exercise his mind' on the issues involved with child abuse legislation.¹⁷⁴ He attached the Briefing Paper which the Secretary of Health had prepared at his request.¹⁷⁵

¹⁷⁴ DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folio 76.
¹⁷⁵ Ibid.

The Briefing Paper dated 16th of August 1981¹⁷⁶ was a redraft for Cabinet of the original Briefing Paper supplied to the Minister of Health two days before. Its stated aim was to provide information on child abuse in the Northern Territory and the Australian States, and to suggest a course of action which the Minister might wish to follow. As might be expected in a Federal system of government the documentary record examined here shows clear interest by Northern Territory officials in approaches followed to the problem of child abuse by other Australian jurisdictions. No State or Territory wishes to appear backward or to be lagging behind the others, and if new and innovative ground can be made, so much the better.

The Briefing Paper is significant because it gives details of concerns held in the Health Ministry as to the state of current child protection legislation and the need for reform. Having analysed the legislation in other Australian jurisdictions (New South Wales, South Australia, Tasmania and Queensland) it then characterized the salient features of this wide body of legislation.¹⁷⁷ It was noted that definitions of 'abuse' varied from State to State and that medical practitioners had a compulsory duty to report cases, with a similar duty being variously imposed on other categories of persons in different States. In all States there was full legal protection against civil liability for breaches of professional ethics defamation, malicious prosecution or charges of conspiracy. Although reporting and follow-up provisions were varied, in no case did laws direct that child abuse reports were to be made to the Police. Provisions existed for immediate custody of a child for a specified period or for immediate admission to hospital allowing for prompt medical assessment.¹⁷⁸

The Paper noted also that child abuse in the Northern Territory had been the subject of considerable discussion over some years and that in 1977 a senior paediatrician of the Department of Health had estimated there could be between 110 and 120 cases of child abuse a year, most of which would be unrecognized. Subsequently, the Department of Community Development, had prepared a proposal for legislation which included provisions for mandatory reporting, legal protection for informants,

¹⁷⁶ DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folio 64.

¹⁷⁷ By 1980 all these States had mandatory reporting laws of some shape on their Statute books.

¹⁷⁸ DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folio 75.

and for assessment by multidisciplinary teams. However, it was pointed out that the proposal did not appear to have been advanced since late 1980.¹⁷⁹

The same Briefing Paper went on to analyze the current legal position with regard to child abuse in the Northern Territory observing that there was no provision for compulsory reporting and no general protection for persons reporting abuse. The informal nature of child protection management systems in the Territory was noted and the paper recommended that the Minister should seek the views of his colleagues and proceed to legislation broadly along the lines of the principles sketched in an Appendix to the paper.¹⁸⁰

This Appendix gave a brief summary of the main body of knowledge about child abuse as well as proposing principles for its management. These included the need for alertness by all possible contacts, early identification of risk, coordination of involved agencies such as the various medical specialties, social welfare, legal personnel and community support groups. In addition was mentioned the principle of maintenance of the family unit as far as possible, the need for on-going family surveillance and support, total confidentiality, and accurate reporting systems. The Appendix proposed that the law should provide a basis for necessary interventions but legal action *per se* should not be seen as the primary mechanism for protecting children from abuse.¹⁸¹

The Health Department Briefing Paper was sent to the Minister for Community Development on 25 August. In doing so the Minister of Health wrote:

*The need for some form of legislative control in the Territory seems paramount ... My purpose therefore in forwarding these papers is to ask that you consider incorporating the principles into any legislation which you may be proposing on this issue.*¹⁸²

Clearly the Minister of Health was convinced that urgent legislative action was necessary and his Department was concerned that draft proposals for introducing mandatory reporting made in 1980 had not been progressed since that time. However, his Ministerial colleague who would have been responsible for such legislation at the time was not to be pressured, for two months were to elapse before

¹⁷⁹ DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folio 75.

¹⁸⁰ Ibid.: Folio 72-73.

¹⁸¹ Ibid.

¹⁸² Ibid.: Folio 76.

the Minister for Community Development replied to this communication from the Minister of Health.

When the reply came on 27th October it took a perhaps rather unexpected line which carried the suggestion of a certain inter-departmental rivalry. The issue of proposed legislation was not addressed at all. Echoing the opening of the Health Minister's memorandum of 25th August, the Minister for Community Development wrote: 'Recent events in Darwin have highlighted the importance of well-coordinated Child Protection Services'. This can be interpreted as a specific challenge to the view of the Minister of Health or that of his Department, concerning the best way to approach the problem of child abuse.

The Minister for Community Development went on to say that such coordination could only be achieved through full cooperation and support from all the Government Departments most closely involved in this area of work. The Territory's child welfare legislation gave the power to investigate child abuse cases to the Police and Community Welfare Division of his Department. Both Australian and international research had demonstrated that families where there was abuse required extensive support services and counseling. All available community resources needed to be harnessed towards meeting their needs. It was considered that no one agency could be fully effective without full support from other community welfare agencies. The recognition of child abuse depended largely on creating public awareness of the problem and in providing training to agency personnel most likely to contact such families.¹⁸³

The Minister of Community Development was not only pointing away from mandatory reporting as an appropriate policy response to the issue of child maltreatment. He was also promoting voluntary cooperation between Departments, Agencies and the Community. The Minister was wedded to an alternative approach to child abuse prevention that relied on agency coordination and public education and he believed that agencies were in place and already becoming more effective. He stated that the Child Protection Consultative Committee established in 1978 had been increasingly active in community education and claimed the increased number of child protection notifications during the year as evidence of its success. He outlined several

¹⁸³ DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folio 84.

measures which were intended to make the Committee more effective in its role. The Committee was to be responsible for advertising and publicity in the mass media and any other appropriate means, and for initiating and/or organizing seminars and training programmes both for the public and workers in the child protection field. Membership of the Committee would comprise representatives from Departments of Health, Community Development, Education, Law and the Police. If the Committee's programmes were to succeed, each representative needed to carry a mandate from their respective departments in order to instigate training programmes for staff. Henceforth, Committee minutes were to be distributed to Department Heads. The Committee would be responsible to the Minister through the Director of Child Welfare. Finally, the Minister sought the Health Minister's cooperation 'in advising your Department of its responsibilities in this vital area of Child Protection'.¹⁸⁴ It seems clear that at this stage, that the Minister for Community Development, following advice received from his Department, was intent upon implementing a more educative and community-based alternative to mandatory reporting.

Certainly, the Community Development Minister's response would seem to have been indicative of a reluctance to proceed, or even to discuss proceeding to a legislative solution, whether by amendment to the existing Act or via the totally new piece of legislation which was under active discussion. In fact the supposed new functions of the Child Protection Consultative Committee were neither new nor particularly original. The proposed functions were part of the Committee's original 1978 charter.¹⁸⁵

Given the previous history of policy development on this subject already described, the Minister of Health might have been forgiven for experiencing surprise, if not incredulity, at the response from his Ministerial colleague for whom the answer to the problem of child abuse, apparently, lay simply in better agency coordination, training and increased publicity. It is possible to detect in this exchange a certain tension and the suggestion of inter-departmental rivalry which after the period under survey in this

¹⁸⁴ DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folios, 83-84.

¹⁸⁵ DoH File, 'Child Abuse and Child Protection', 84/0076, Folio 187.

study created operational difficulties in implementing the new legislation with welfare and health perspectives clashing strongly.¹⁸⁶

Any such tension was, however, not particularly evident in the Health Minister's memorandum to his Departmental Secretary when he forwarded the Minister of Community Development's response. The Health Minister simply mentioned that in recently raising, with the Minister for Community Development matters in the area of child abuse which were of concern to him, his principal concern had been for adequate and modern legislation in what he considered was a frequently neglected area of Government's activity. The Minister conveyed without further comment, the substance of his Ministerial colleague's response to the Secretary of Health. He asked the Secretary to ensure the Health Department's cooperation with the plans to extend the work of the 'Child Protection Consultative Committee' and to comment on any issues arising from the Minister of Community Development's plans.¹⁸⁷ This was possibly in recognition of the fact that ultimately responsibility for Territory-wide child protection policy and legislation lay in the hands of the Minister for Community Development, not under the Health portfolio.

Interestingly, on 8 September 1981, a month to the day after Dean Long's death the 'Child Protection Consultative Committee' had announced the organization of a three-day 'Workshop on Child Abuse' to be held in late October. The presenters were child protection specialists from the Child Life Protection Unit in Montrose, Sydney. Opened by the Community Development Minister, the workshop was described as: 'a unique opportunity for social workers, community health sisters, psychologists, doctors, nurses, school teachers, police officers, lawyers and other interested persons to learn from the expertise of experienced professionals in the field of child abuse'.¹⁸⁸ The Northern Territory News commenting on the workshop stated that there was no Territory legislation which required the medical profession to report cases of child abuse and quoted the Community Development Minister as saying that while this was under discussion:

¹⁸⁶ See, for example, the polarized attitudes evident in 'Minutes of Meeting to Discuss Reporting of Cases of Child Abuse as required by new legislation, with special regard to child abuse on Aboriginal Communities', 13 September 1983, DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folios 195-196, and in 'Meeting Between Health and Welfare Officials' DCD File N87/0070, Folios 97- 99.

¹⁸⁷ DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folio 85.

¹⁸⁸ DoH File, Child Abuse and Child Protection, Letter of Invitation to the Minister of Health, 84/0076, Folio 79.

*people must be educated into gradually realizing that they should come forward confidentially, if they suspected a case of physical or mental child abuse. I do not suggest for one moment that we will come to terms with this problem this way but we will at least make a very forthright move in the right direction.*¹⁸⁹

Although no direct and concrete documentary evidence has been located to demonstrate that the Government was still experiencing considerable public pressure from the public outrage about Dean Long's death, it is not unreasonable to infer that this was the case from the developments outlined. It appears that at least in certain quarters of the Government there was a felt need to respond legislatively to the perceived crisis. For example, in the following month, on 24 November 1981, in a question to the Minister for Community Development the same Member of the Legislative Assembly who had already raised the matter in February, reminded the Legislative Assembly that new Child Welfare legislation had been in preparation for a number of years in the Northern Territory and asked: 'Is that legislation ready to be introduced this sittings?'¹⁹⁰ The Minister's somewhat equivocal reply was that:

*The legislation is certainly not ready for introduction at these sittings. The job of preparing new welfare legislation for the Northern Territory has been a very comprehensive one. The work was started on a fairly intensive basis following the Welfare report that was prepared in the Northern Territory some time ago. The department has engaged experts in various fields of welfare to assist it in the preparation of new legislation to ensure that the Territory can have efficient and modern legislation. I cannot put a specific time on it ... but I would hope to have it prepared for introduction in the early part of next year.*¹⁹¹

Although, this parliamentary question, like the earlier one in February, referred not so much to the pending amendment to the *Child Welfare Act* but rather to the major revision of the child welfare legislation still underway, it is evident that in the Legislative Assembly there was strong interest in the Government's legislative plans regarding child abuse.¹⁹² The Minister's apparent stalling and failure to reveal any detail of what was proposed is perhaps indicative of the ongoing interdepartmental debate and disagreements already alluded to. However, due to political changes matters were soon to come to a head and a definite direction taken.

¹⁸⁹ Northern Territory News October 31, (1981:5).

¹⁹⁰ NT PR: Questions Without Notice, 24 November 1981. 'Sittings' appears to be a Northern Territory expression referring to Parliamentary sessions.

¹⁹¹ NT PR: Questions Without Notice, 24 November 1981.

¹⁹² Refer to the series of Questions Without Notice on the same topic from the same Member, NTPR dated 25 February 1981, 24 November 1981, 2 September 1982, and 24 November, 1982.

A change of Minister and on-going action opposing mandatory reporting

On 26 January 1982 a general Cabinet re-shuffle was announced by the Chief Minister. One result of this procedure was that whilst the Health Minister retained his portfolio, a new Minister for Community Development was appointed. Again there is no direct documentary evidence on file to show whether the new Minister was known to hold views on mandatory reporting opposite to those of his predecessor. In any case, shortly afterwards Cabinet agreed that an Amendment to the *Child Welfare Act* incorporating mandatory reporting was to be introduced.¹⁹³ The measure itself was read for the first time in the Legislative Assembly on 10 March 1982.

There is clear evidence in the documentary record that a rear-guard action against the introduction of mandatory reporting by amendment to existing legislation was still being fought within the bureaucracy notwithstanding the fact that a draft *Amendment Bill* was already on its way to the Legislature. The leadership of the Community Welfare Division of the Department of Community Development was still strongly opposed to the introduction of mandatory reporting. Their main reason was that the resources would be insufficient to cope with a flood of notifications of alleged child abuse, a high percentage of which would be found to lack substance. Possibly, Departmental Officials felt that with a new Minister their chances of avoiding the imposition of mandatory reporting, were thereby enhanced. If so, they misread the situation badly.

Extraordinarily, only two days prior to the First Reading of the draft amendment, in what can only be described as a strongly worded Memorandum to the Minister for Community Development dated 8 March 1982, the Secretary of the Community Welfare Division made a last, and it would appear somewhat desperate, attempt to persuade his Minister not to proceed with the proposal to introduce mandatory reporting. He argued that the proposed amendments were far too broad.¹⁹⁴ He pointed out that they required the general public not only specified groups of informed professionals likely to encounter suspected cases, to report child abuse. Concern was expressed that large numbers of 'trivial cases' would be generated leading to overload of the system. It was claimed that instead of having a

¹⁹³ DCD File CN 83/0066, 'Child Protection - Introduction of Mandatory Reporting', Folios 10 and 30.

¹⁹⁴ DCD File CN83/0066, 'Child Protection - Introduction of Mandatory Reporting', Folios 23-25.

responsibility to report abuse imposed on them the public would be 'better served' by provisions for immunity against civil prosecution when making voluntary reports. Photocopies of pages in support of these arguments from relevant Australian Law Commission Reports (Nos. 12 and 18)¹⁹⁵ were attached.

In the Memorandum the Secretary pointed out that previously circulated drafting instructions for the *Community Welfare Amendment Bill* had, by contrast, contained provisions for mandatory reporting only by certain occupational categories, and had included a general legal immunity provision. He raised concerns about the need for a comprehensive education programme to precede any legislation for mandatory reporting, especially in view of a poor record of cooperation over reporting from professionals in the past and the opposition of individual Medical Practitioners. The desirability of winning over of professional 'hearts and minds' to a new reporting regime through a process of education and consultation *prior* to legislation was stressed. He stated that the previous Minister had always intended to table a draft *Amendment Bill* for public discussion. And he pointed out that professional resentment at 'legislation without consultation' could lead to non-compliance.¹⁹⁶

The Secretary of the Department of Community Development then recommended three alternatives to the Minister:

- (a) *(that) we do not rush prematurely into legislation on this subject but that you agree to proceed along the lines proposed for the general review of child welfare legislation*

or

- (b) *that the proposed amendment, if introduced, be allowed to lie upon the table until some public debate ensues. This may then allow for some of the necessary public education effort to proceed;*

or

- (c) *that amendments to the Child Welfare Act be re-drafted along the lines proposed in the review of the legislation. Again, a period of public review would be desirable.*

*If you do not favour either of these approaches, could I request a discussion with you before further action is taken.*¹⁹⁷

¹⁹⁵ ALRC(1981) Discussion Paper No.12 *Child Abuse and Day Care*, Canberra, and ALRC(1981) *Report on Child Welfare*, No. 18, AGPS, Canberra.

¹⁹⁶ DCD File CN83/0066, 'Child Protection - Introduction of Mandatory Reporting', Folios 23-25.

¹⁹⁷ DCD File CN83/0066, 'Child Protection - Introduction of Mandatory Reporting', Folios 23-25.

The Minister's own Department was making a last ditch stand to convince him that mandatory reporting legislation was inadvisable. However, they were not to succeed in gaining the Minister's ear.

The Minister for Community Development's decision

The 19th March 1982 response of the new Minister for Community Development to his Departmental Head on this subject of the proposed amendment to the *Child Welfare Act* was brief and to the point: both he and the Attorney-General, had been fully aware of each of the Secretary's points prior to taking the decision to introduce the legislation. Addressing the questions of community education and delay the Minister continued:

*I can think of no better way in all the circumstances to make the public aware of the present level of child abuse than the method I have adopted. Let us face facts; the subject has been widely publicized for years, a plethora of committees established, all to no avail. Perhaps now the public, the professions and law enforcement agencies will accept that the Government is serious in its concern for the well being of children and their right to expect protection against abuse.*¹⁹⁸

The *Amendment Bill* now to be introduced was later described in the House as an 'emergency measure'¹⁹⁹.

The evidently pressured nature of the decision-making at this time was reflected in a further note of urgency when on the 2nd April 1982 the Secretary of the Cabinet wrote to the Secretary of the Department of Community Development, calling his attention to the fact that Cabinet rules required that all proposals for legislation were to be submitted to Cabinet for consideration and clearance at least two weeks before the commencement of the Sittings at which it was proposed to introduce them. It was noted that in respect of *The Child Welfare Amendment Bill 1982 (Serial 187)* introduced during the March sittings of the Legislative Assembly there was no record of a Cabinet Submission, a draft *Amendment Bill*, an Explanatory Memorandum, Committee Notes, or a Second Reading Speech having ever been endorsed by Cabinet. In other words, if the record is correct, the *Amendment Bill* had been introduced to the Legislative Assembly without formal Cabinet approval. It was

¹⁹⁸ DCD File, CN83/0066, 'Child Protection - Introduction of Mandatory Reporting', Folio 31.

¹⁹⁹ NTLA 1983, PR: 2226.

therefore requested that the required Cabinet Submission should be prepared and submitted at the earliest possible opportunity.²⁰⁰

It is possible to imagine that this request caused a certain stir in bureaucratic dovecots in Darwin. The embarrassing alternative was to have the *Amendment Bill* removed from the Order Paper, and of having it held over for clearance and presentation at a later sitting of the Legislative Assembly. Certainly, the Department of Community Development acted with some dispatch as only three weeks later the Secretary was requesting that alterations be made to the hastily prepared first draft of the Submission to Cabinet. These were to include financial details and resource implications, which had been omitted from the original document.²⁰¹

The Minister receives new advice

The Cabinet Submission²⁰² is worth examining in some detail as it explicitly states the rationale of the *Amendment Bill* and provides some insight into the Minister's reasons for introducing it apparently in the face of his Department's earlier objections. It clearly indicates that the Minister of Community Development was in charge of the process and was prepared to act in opposition to his Department's wishes and advice. It also illustrates the capacity of the Department to overcome its scruples and tailor its advice to meet a new appreciation of its Minister's requirements.²⁰³

The documentary record shows that the Department had quickly revised its standpoint and from opposing mandatory reporting had become an advocate of the policy. The Department's Cabinet Submission recognized as 'issues' the fact that the Northern Territory currently had no legislation regarding the reporting of child abuse and neglect, and that it was proposed to amend the *Child Welfare Act* to provide for compulsory reporting of suspected child maltreatment by all persons. Those persons making such reports in good faith would be immune from criminal or civil liability. In discussing these issues the Submission claimed there was a growing consensus in Australia and overseas that legislation was required to provide for the mandatory reporting of child abuse generally by persons in specified occupations. It reported

²⁰⁰ DCD File, N85/0675, 'Child Welfare Act and Amendments', Folio 95.

²⁰¹ DCD File, N85/0675, 'Child Welfare Act and Amendments', Folio 122.

²⁰² DCD File, N85/0675, 'Child Welfare Act and Amendments', Folios 80-89.

²⁰³ It is perhaps a tribute to the professionalism of the departmental officials that they could formulate such a comprehensive Submission taking a line apparently so counter to their own preferred course of action. Certainly the Minister was now receiving the advice he wanted to hear.

that such legislation currently existed in New South Wales, Queensland, South Australia and Tasmania, and had been strongly advocated in the recent Child Welfare Report of the Australian Law Reform Commission. Significantly, the Submission noted that children were highly vulnerable to long-term physical impairment, or even death, as result of parental abuse or neglect and asserted that:

*The recent death of an abused of child in Darwin has highlighted the need to strengthen provisions to protect children in the situation.*²⁰⁴

It was noted that international data showed dramatic increases, ranging from 400% to 2000%, in cases reported following the introduction of mandatory reporting provisions. In New South Wales, for example, the number of cases reported had risen from 64 to 887 in the year following introduction of mandatory reporting legislation. Reasonably, it might be assumed that similar trends regarding numbers of cases reported could occur in the Northern Territory, as elsewhere. Of the 130 cases reported in 1981 in the Northern Territory 55% were substantiated and required some further action. The Submission claimed that if a similar ratio of substantiated cases was maintained in the Northern Territory, then any significant increase in the reporting rate would afford greater protection to a substantial number of children at risk of abuse. However, this assumption appears to be unjustified because under mandatory reporting there is documented tendency for the rate of substantiation to fall.²⁰⁵

The Submission went on to say that mandatory reporting legislation in other Australian States, and the model legislation formulated by the Australian Law Reform Commission, provided for mandatory reporting by certain categories of persons, such as medical practitioners, nurses, teachers and social workers, on the premise that these professions had a special responsibility in the field. However, the proposed Northern Territory legislation did not target particular reporting groups as it was held that *all* community members have responsibility for the protection of children.²⁰⁶ This was a key difference between what was being proposed in the Northern Territory and the situation that prevailed elsewhere in Australia where reporting requirements were more restricted. This aspect of the Northern Territory proposal was possibly, in part, an attempt by the Government to address concerns of the medical profession that

²⁰⁴ DCD File N85/0675, 'Child Welfare Act and Amendments', Folio 6.

²⁰⁵ Ainsworth (2002); Hewitt and Robb (1992).

²⁰⁶ This claim regarding the existence of a general responsibility to report was asserted but not argued.

they were being 'singled out'. In fact, as the next Chapter shows, the profession was a chief target of the legislation.

The Submission further noted that the major factor which inhibited reporting especially by certain professional groups, was fear of civil action, or action by professional bodies for breaches of confidentiality. The immunity provisions included in the proposed amendment were considered to be of vital importance in this connection. Certainly, such provisions are common features of reporting laws whether in voluntary or mandatory regimes. They are clearly necessary in order to give potential reporters confidence that their actions in reporting suspicions of maltreatment in good faith, are not to their own detriment.

Consideration was then given to the reporting options before the Government. The first option was to choose not to legislate in the area but to depend upon increased publicity to realize the policy aim of achieving increased public awareness about child maltreatment. Unsurprisingly, this option was now not supported by the Department. The argument being that experience elsewhere 'showed conclusively' that mandatory reporting provisions are the most effective means of encouraging the public to report cases of suspected abuse.²⁰⁷ Furthermore, this option did not overcome the problem of immunity from civil liability. The second option was similar to that chosen by other Australian states and supported by the Law Reform Commission: to restrict mandatory reporting provisions to specific occupational groups whilst applying the legal immunity provisions across the board. This option, although preferable to the first, was not supported in the Submission which argued that *all* members of the community had a responsibility to report child abuse. Predictably, given the Minister's determination, the 'preferred' third option in the Submission was also that proposed in the *Amendment Bill*: legal responsibility should be placed on *every* person in the community 'to support the government in its efforts to protect children from all forms of maltreatment'. This option also protected persons who made reports in good faith from any consequential legal proceedings.²⁰⁸

In discussing the public impact of the draft *Amendment Bill* the Submission stated that while there had traditionally been resistance to mandatory reporting provisions

²⁰⁷ This unargued proposition was, justifiably, criticized in the Health Department commentary on the Submission as being without evidence. Refer Footnote 35.

²⁰⁸ DCD File N85/0675, 'Child Welfare Act and Amendments', Folios 80-89.

from professional groups likely to be affected by it, this resistance might be reduced if no single group was singled out by the proposals. It was anticipated that the public would be supportive of measures to give children increased protection from maltreatment. It was noted that public comment had been minimal after the *Amendment Bill* had been announced. However, it was considered that once the amended provision was enacted it would need to be widely publicized. Discussing publicity, implementation and staffing costs the Submission mentioned that a substantially increased workload was anticipated as result of the proposed amendment. To effectively implement the legislation additional staff would be required.

With regard to the coordination of child-protection responses the Submission claimed that the issue had been widely canvassed by the Board of Inquiry into the Welfare Needs of the Northern Territory Community, and also, in community and inter-departmental consultations connected with the earlier general review of Community Welfare legislation. However, no detail of these consultations was provided.

The Cabinet Submission was circulated in draft form to Departments of Law, Chief Minister, Health, Education, Treasury, the Public Service Commission and the Police all of whose comments were attached to the final form of the Submission. The Submission concluded with the recommendation that 'Cabinet support the passage of the *Child Welfare Amendment Bill 1982* through the Legislative Assembly'.²⁰⁹

Departmental responses to the draft Cabinet Submission

The process now was for the Submission in draft form to be circulated to other affected Departments for comment. A perusal of the inter-departmental comments on the Submission, and the Community Development Ministry's detailed responses to these, is instructive. Three Departments offered no objections to the Submission, while several others made suggestions for improving one aspect or another of the proposed measure or raised concerns about statistics, implementation and resources.²¹⁰

²⁰⁹ DCD File N85/0675, 'Child Welfare Act and Amendments', Folios 80-89, and 94.

²¹⁰ DCD File N85/0675, 'Child Welfare Act and Amendments', Folios 95-101.

Only the Department of Health opposed the Submission and did so, on several grounds.²¹¹ In the first place the Department disputed the significance of the claim in the Submission that the proposed legislation was relevant to the recent death in Darwin of an abused child. The Department of Health was concerned about a possible implication that the proposed legislation would likely have prevented the death of this child. The response to this viewpoint from the Department of Community Development as putative promoters of the *Amendment Bill*, is forthright and reiterates the connection between that incident and the current proposal:

*The Department of Health disputed the claim that this legislation is relevant to the case of the abused child who died recently in Darwin ... The fact is that the liaison between the Health Department and our own was very poor in this case, and I've no doubt that clear definitions of responsibility, backed by adequate reporting legislation, may have saved the child's life. This Division's procedural guidelines have been tightened considerably since that incident, to prevent any further confusion.*²¹²

The Department of Health also disputed the increase in numbers of cases reported anticipated by the Submission. In response, the Community Welfare Division's comment reiterated that research statistics which it had gathered showed significant increases in the numbers of cases reported following the introduction of mandatory reporting in other jurisdictions and claimed this as a strong indication of its value.

The Department of Health was also critical of the proposal to resile from mandating only particular professional groups to report abuse, stating that such a departure from the recommendations of the Australian Law Reform Commission and from the example of legislation in other States was not supported by any evidence other than the bare assertion that all members of the community have a responsibility for the protection of children. This criticism by the Health Department was not further commented upon by the Department of Community Development, probably because it went to the political choice or principle at the heart of the *Amendment Bill*. Nevertheless, while acknowledging in its response that reporting by hospital medical staff in some areas was better than in others, and that in the absence of legal protection there were often significant delays in reporting by doctors, the Department of Community Development was implicitly acknowledging that the medical profession was a key target group for the provisions of the *Amendment Bill*.

²¹¹ DCD File N85/0675, 'Child Welfare Act and Amendments', Folios 100-101.

²¹² DCD File N85/0675, 'Child Welfare Act and Amendments', Folio 111.

The Submission provided the Minister with the formal justification and rationalization for the policy he had *already* introduced into the Territory's Legislative Assembly. It will be seen below what relatively little use was made of it in the Parliamentary Debates which followed.

Consultation

The documentary record gives a clear sense of haste and impatience on the part of the new Minister of Community Development. This was also evidenced by the speed with which the new measure was introduced into the Legislative Assembly following his assumption of office. Due to this haste which, it is suggested, was motivated by the political need to be seen to be taking some positive action in the wake of Dean Long's death, there was little time for public consultation on the *Amendment Bill*, even if this had been the intention. Certainly no formal mechanisms for conducting consultations, such as Select Committee hearings were set in place. It was perhaps also felt that since a major reform to the entire child welfare legislation was in train and would involve a wider public consultation process, efforts at public consultation at this stage would be premature or redundant.

In any event, the *Amendment Bill* which was limited to introducing mandatory reporting to the Northern Territory, was constructed in some urgency in response to the political situation. Such consultations as did occur in respect of the general policy of mandatory reporting prior to the introduction of the *Amendment Bill* and subsequently in respect of the provisions of the *Amendment Bill* itself, were internal to the Governmental bureaucracy.

The next chapter outlines and analyses the Legislative Assembly debate on the *Child Welfare Act Amendment Bill 1982*.

CHAPTER SIX

THE LEGISLATIVE PROGRESS OF THE AMENDMENT BILL AND AN ANALYSIS

INTRODUCTION

This chapter brings us closer to finding answers to some of the key research questions of this study.²¹³ It traces the parliamentary process by which mandatory reporting was introduced into Northern Territory law. The speeches of the responsible Minister, Mr Robertson, who was the new Minister for Community Development, and those of other Members of the Legislative Assembly, are described and analyzed with a view to establishing the justifications provided in the Legislative Assembly for the new measure. It will then be possible to give consideration to how far the Legislative Assembly debates reflect and reveal the earlier processes of policy formation already outlined; and whether in the course of this parliamentary policy-making process significant changes were made to the final shape of the policy as it emerged from the legislative process.

It is immediately noticeable that although Members ranged widely in their speeches on general topics associated with child abuse, its evils and the necessity for 'something to be done' about it, relatively little attention was paid to detailed arguments *pro* and *con* mandatory reporting as an effective policy response to the problem of child abuse.

In the entire debate there appeared to be a prevailing assumption that given the evils of child abuse, mandatory reporting would be an obvious and effective measure towards reducing its incidence.²¹⁴ In addition the Minister made a political effort to depict the measure as intended bring the medical establishment 'into line'. Presumably, making this point was felt to have some political value to the Government. There was no effort by the Minister, in the interests of a more informed debate, to make available to the Legislative Assembly information on the advice he had received from his Department. There was also an intriguing unwillingness on the Minister's part to associate the current measure with the death of Dean Long. That was left to other Members of the Legislative Assembly.

²¹³ See Chapter Two, p. 11 *supra*.

²¹⁴ See the section in Chapter Two on 'Assumptions of Mandatory Reporting', pp. 22-23, and Hutchison (1993: 57-59)

The conclusion is reached that from a reading of the official records of debate in Legislative Assembly the enquirer would remain largely uninformed about the process of policy formation which lay behind the introduction of mandatory reporting, including the tensions and key issues that infused that process. It is also concluded that despite official advice against the policy, the Northern Territory's adoption of mandatory reporting became a foregone conclusion once the new Minister for Community Development had made up his mind. Furthermore, it appears that the Parliamentary process in the Legislative Assembly constituted a strictly limited examination of the issues and was merely the formalization of a politically pre-determined policy position.

The process in the Legislative Assembly

Mandatory reporting of child abuse was introduced into the legal code of the Northern Territory pursuant to a series of amendments to the then *Child Welfare Act (formerly the Child Welfare Ordinance)*. The *Amendment Bill* introduced a new section into the *Child Welfare Act*: section 70A, which required that any person who has reasonable grounds for believing that an offence referred to in section 70(1) and (2) of the *Child Welfare Act* – that is an offence of assaulting, ill-treating, exposing or causing or procuring a child to be ill-treated or exposed – is committed to report all material facts in his knowledge being grounds for his belief to the Director of Child Welfare, a welfare officer or police officer. Section 70A (2) prevents any civil or criminal action lying against a person who in good faith makes a report under section 70A(1).

The *Child Welfare Amendment Bill* was introduced into the Northern Territory Assembly on the 10 March 1982 and was given its Third Reading on June 1 the same year. At every stage the measure passed unopposed. Having received the Administrator's assent on 28th June 1982 it became applicable law in the Northern Territory. The legislative process from Introduction to Assent had taken less than three months which may be considered a somewhat rapid progress for a landmark piece of social legislation representing a major change in the direction of policy.

First Reading Debate

The Northern Territory Legislative Assembly Parliamentary Record (Hansard) does not record the substance of the first reading debate merely noting that 'The *Amendment Bill* (was) presented and read a first time'.²¹⁵

²¹⁵ NTLA 1982, PR: 1917 [Mr Robertson, Minister for Community Development].

Second Reading Debate

The Second Reading debate immediately followed the introduction of the *Amendment Bill*. The Minister of Community Development, in a discursive preamble given before considering and describing the provisions of the *Amendment Bill* itself, chose to attack the medical profession. He referred to an article of the front page of the Territory's chief newspaper, the *Northern Territory News*, for 27th January 1982. This concerned an internal police report which had commented on the lack of effective legislation to deal with child abuse in the Northern Territory. The Minister quoted from the article as follows:

*the medical profession, for reasons known only to itself, does not record instances of child abuse even though it has first contact with the child.*²¹⁶

Quoting the report further as saying that average citizen also did not want to be involved, the Minister went on to say that the position of children in the community was so vulnerable that the Government believed that there was a responsibility on every person to be party to child abuse prevention. In essence, this brief statement of principle contained the Government's full philosophy and rationale for the amendment. It can hardly be described as a comprehensive examination of the issues inherent in the notion of mandatory reporting as an effective policy response to the phenomenon of child abuse.

By way of explanation, the Minister contrasted the existing obligation at common law to report felonies (serious offences not including assault) with the lack of any legal requirement to report child abuse, and lamented this. He claimed that the common law obligation did not suffice, first, because it only applied to 'serious' offences and did not cover assault on a child and because it was subject to a public interest reason for non-disclosure. This referred to the privileged relation between the medical practitioner and patient which could provide a common law defence on public interest grounds for failure to report. Confusingly, the Minister then related this defence (which he wished to remove from the law) to the legislation he was promoting, by pointing out that if it was known that medical practitioners were obliged to report suspected child abuse, people may be dissuaded from seeking medical help and this would not be in the public interest. It can only be speculated how firmly the Minister had a grasp of the argument here.

²¹⁶ Ibid: 1918.

Without his explicitly making the link with the Dean Long case, it would appear the Minister was suggesting in these remarks that the *Amendment Bill* was being introduced to remedy a deficiency in the common law. This was in response both to public disquiet about child abuse and child abuse reporting provisions in the Northern Territory as reflected in the press report from which he quoted, and to an alleged lack of reporting by a section of the community having a key contact with abused children, namely, the medical profession.

The Minister then briefly described the provisions of the *Amendment Bill* itself and concluded by saying that he believed 'that no step to protect a child from child abuse is too short a step to take and this is a long step in the right direction'. He concluded by commending the *Amendment Bill* to Honorable Members of the House. Debate was then adjourned.

Comment

The only contextual framing given by the Minister at the outset for introducing the measure was a newspaper article quoting leaked Police material somewhat critical of the medical profession's record of reporting child abuse. He also quoted the article's claim that 'the average citizen also does not want to be involved'.²¹⁷ The Minister did not describe or refer to child abuse reporting legislation elsewhere in Australia. The Minister made no explicit reference to current community concerns about child abuse or to any recent incident of child abuse or child death. This silence is arguably the most significant disjunction between the Minister's presentation of the *Amendment Bill* and what is known from other sources about its genesis. The Minister did mention the reform process already in train to bring in a new *Community Welfare Act* to replace the existing child welfare legislation, but no explicit link was made between that process, the developments which had led to the measure under consideration, or its introduction at that particular time.

It was left to other Members to place the introduction of the *Child Welfare Amendment Bill* into a socio-political context. Three of the six Members who spoke in the Second Reading debate made explicit reference to the recent well-publicized

²¹⁷ NTLA 1982, PR: 1917 [Mr Robertson, Minister for Community Development].

case of child abuse in the Northern Territory community.²¹⁸ In fact one Member asserted that 'the death of a child in Darwin as a result of injuries inflicted by members of his family has been responsible for this small amendment to the Child Welfare Act'.²¹⁹ Another speaker said: 'I suggest that this legislation was brought about by the recent death of a very young child after it had been abused and maltreated for a number of years'.²²⁰ As we have seen, when introducing the *Amendment Bill* the only justification given by the Minister was the unargued proposition that the position of children in the community was so vulnerable that the Government believed that all citizens were responsible for child abuse prevention and that mandatory reporting was a key strategic element in achieving this aim.

Resumption of Second Reading debate

On Tuesday 25th May 1982, the Second Reading of the *Amendment Bill* resumed with six Members, from both the Government and Opposition, all speaking in favour of the measure. The first Member to speak made passing reference to the 1981 report of the Australian Law Reform Commission on child welfare and briefly canvassed arguments it contained both for and against mandatory reporting.²²¹ However, she stressed especially the argument in favour of mandatory reporting that compulsory reporting emphasizes the law's commitment to the welfare and protection of children. She also mentioned that the legislation would bring Northern Territory into line with the situation existing in most other Australian States where one or other variety of mandatory reporting prevailed.²²² The second speaker expressed disquiet concerning doctors' frequent reluctance to breach client confidentiality by reporting abuse. Perhaps not very cogently, he argued that imposing a general requirement to report abuse as an expression of a perceived public duty on all citizens to protect the vulnerable would answer many concerns about mandatory reporting, such as the claimed disincentive effect upon parents who might not take an injured child to the doctor if they knew they might be reported by that doctor. This speaker also claimed that the *Amendment Bill* was welcomed by the community and social workers in particular but he gave no evidence in support of this assertion.²²³

²¹⁸ Dean Long was not mentioned by name probably in deference to the fact that the Coroner's Court had not yet released its findings on his death.

²¹⁹ NTLA, PR: 2224 [Mrs Lawrie].

²²⁰ NTLA, PR: 2227 [Mrs. Padgham-Purich].

²²¹ ALRC (1981) *Report on Child Welfare*, No. 18, AGPS, Canberra.

²²² NTLA 1982, PR: 2221-2222 [Mrs. O'Neil].

²²³ NTLA 1982, PR: 2221-2222 [Mr. D.W. Collins].

The third speaker spoke expansively on child abuse and its management, referring extensively to British reports and experience. She drew an analogy between the well-publicized British case of the death of Maria Colwell in the early 1970s and the recent death of Dean Long in Darwin. Although strongly in support of the *Amendment Bill*, this speaker described it, as:

*an emergency measure arising out of recent community concern about what was happening with child abuse and some professional reluctance to support suspected abuse to the relevant authority.*²²⁴

However, she did not offer particular arguments in favour of mandatory reporting. The measure appeared to be supported as a stepping stone on the way to completely revised legislation to update the child protection system in the Northern Territory.²²⁵

The Leader of the Opposition, who followed, spoke in support of the *Amendment Bill* while expressing some reservations about requiring all Members of the public and not just the medical profession to report abuse. He claimed to have 'read extensively on all the reports, particularly those of the Australian Law Reform Commission'.²²⁶ He expressed skepticism on 'the arguments about invasion of privacy' but was concerned with 'the fear raised that legislation of this kind would lead people not to report such things'.²²⁷ While still in support of the *Amendment Bill* he concluded with a further expression of concern about potential problems of non-reporting arising as a consequence of the proposed legislation.

The penultimate speaker, in a wide ranging speech not specifically focused on mandatory reporting, despite its introduction being a chief purpose of the *Amendment Bill*, also alleged that the legislation was due to:

*the recent death of a very young child after it had been abused and maltreated for a number of years.*²²⁸

²²⁴ NTLA 1982, PR: 2223-2226 [Mrs. Lawrie].

²²⁵ Ibid.

²²⁶ It is not clear from the documentary record precisely what reports these may have been but presumably included: ALRC (1981) Discussion Paper No.12 *Child Abuse and Day Care*, Canberra, and ALRC(1981) *Report on Child Welfare*, No. 18, AGPS, Canberra, relevant sections of which had been made available to him by the Director of the Community Welfare, Division of the DCD in the lead-up to the legislation. Refer: DCD File No. N83/0066 'Child Protection- Introduction of Mandatory Reporting, Folios 11-25.

²²⁷ NTLA 1982, PR: 2226-2227 [Mr. B Collins].

²²⁸ NTLA 1982, PR: 2227 [Mrs. Padgham-Purich].

She supported the *Amendment Bill* with the hope that the amendment to the legislation would be fruitful and meet its intention of reducing the incidence of child maltreatment.²²⁹ The final speaker also commended the *Amendment Bill* and expressed the hope that the measure would lead to the reporting of an increased number of cases of child abuse.

It appears remarkable from the record of these debates that Members did not more thoroughly argue the issues or test the proposal for its capacity to achieve the stated end of reducing child abuse. There seems throughout to have been much expression of hope and a presumption in favour of the measure under discussion with no serious consideration being given to the possible negative affects of introducing mandatory reporting nor any explanation from the Government regarding how it proposed to avoid these.

Third Reading

Debate was further adjourned to the 1 June 1982 when both the Second Reading was concluded and a very brief Third Reading of the *Amendment Bill* took place. Bringing the Second Reading debate to a conclusion the Minister replied to concern raised by Members during the course of debate regarding what was to happen in the Department once a compulsory report was made. He described the intake, response, and investigation procedures employed by his Department when a notification of child abuse was received, and the existing powers under which Departmental officers acted. He acknowledged the archaic nature of much of the existing legislation and pointed out that he hoped to introduce new Legislation relating to child welfare and youth offending in the next sittings of the Assembly.

The Minister mentioned that the operative focus of the Child Welfare Division of his Department was protection and welfare of children not the punishment of parents. He briefly described an intended further amendment to the *Amendment Bill* designed to clarify the provision giving immunity from prosecution to make clear that an abuser who self-reported could not thereby claim legal immunity. This would avoid any possibility of 'a self-confessed child abuser avoiding his or her just desserts by making the report personally'. He claimed that in proposing to change the

²²⁹ Ibid: 2229.

Amendment Bill in this way the 'Law Reform Commission's Report' was being followed.

During the Third Reading, during which only two Members spoke and which must have been concluded in less than two or three minutes, there was no further examination of the merits or demerits of mandatory reporting.²³⁰

Finally, at the conclusion of the Third Reading, just before the measure was enacted the Minister announced, but only in response to the prompting of another Member, that a publicity campaign had been prepared to explain the new law of mandatory reporting on child abuse in the form of a pamphlet to go out to all people who were likely to be involved in the detection, or to have contact with, child abuse.

Discussion

Having told the story of the genesis and determination of the Northern Territory's mandatory reporting policy process it is now possible to begin to draw some conclusions about the process.²³¹ As mentioned in Chapter Four there are a number of key factors pertinent to an analysis of the Legislative Assembly debates. These include the attention given by the responsible Minister and by other speakers to the context and reasons for the proposed legislation, the issues identified and arguments adopted, the costs and benefits identified, the evidence adduced, the degree of transparency about advice received or research employed, consultation processes and community support or opposition to the measure.

Reasons and Context

In his Second Reading address the Minister's gave only two explicitly stated reasons for the introducing the *Amendment Bill*. The first was that although there was an obligation in common law to report felonies this was inadequate when it came to child abuse which was not seen by the common law as a serious felony. Whereas the Government and he claimed, 'all right thinking Members of the community ,firmly believed that there is a responsibility on each and every person to be 'a party to the prevention of child abuse'. The Minister implied that mandatory reporting would help to prevent child abuse but quoted no research or evidence to support his claim. For

²³⁰ NTLA 1982, PR: 2411[Mr. Robertson, Minister of Community Development].

²³¹ See the comments on the narrative tradition within policy analysis on page 37 *supra*.

the Minister it was simply not in the public interest for child abuse not to be compulsorily reported.²³² Only in the case of the change to the *Amendment Bill* which was introduced during the Third Reading to alter the Section 70A (2) immunity provisions was there any explanation of the rationale of the change given: it was in accordance with the Australian Law Commission recommendations and made 'to avoid any possibility of a self-confessed child abuser avoiding his or her just deserts making the report personally'.²³³

Secondly, the Minister adverted to, but did not develop in any detail, a concern about the failure or reluctance of the medical profession to report child abuse. He did not rehearse even the arguments for and against mandatory reporting of child abuse supplied in his Briefing Papers. Furthermore, In a remarkable *non-sequitur* given his concerns about non-reporting by the medical profession, when discussing the deficiencies of the common law he appeared to refer approvingly to an argument that mandatory reporting may discourage parents/patients from seeking help in a child abuse situation.²³⁴

Costs and benefits

The difficulty of making meaningful cost-benefit analyses in the case of policy proposals such as mandatory reporting was noted in Chapter Two. Nevertheless, it might be expected that some mention of these elements would be part of an informed advocacy of the policy and subsequent debate about it. However, on the question of expected costs and benefits of the proposed policy, the Minister made no reference to financial costs and other risks associated with the policy and quoted no statistical financial information to explain or justify the introduction of the policy. This was despite the fact that the revised version of the Cabinet Submission went into such matters in some detail. Nor did the Minister address the matter of evidence for or against the efficacy of mandatory in reducing the incidence of child abuse. His position appears to have been simply that the proposition was self-evident: every person has responsibility to be party to the prevention of child abuse. And that, therefore, mandating the reporting of abuse and protecting those persons who reported in good faith from the danger of civil or criminal action, is a justified and

²³² NTLA 1982, PR: 1918 [Mr Robertson, Minister for Community Development].

²³³ NTLA 1982, PR: 2410 [Mr Robertson, Minister for Community Development].

²³⁴ NTLA 1982, PR: 1918 [Mr Robertson, Minister for Community Development].

necessary step towards protecting children from abuse, which is in the public interest.

Information, advice and research

Despite the fact that much advice had been tendered²³⁵, there are only two places in the Hansard where it is possible to discern that the Minister had received information and advice from his Department. The first is when the Minister thanked the Officers of his Department for providing him with notes enabling him at the conclusion of the Second Reading debate to answer Members' questions about how child abuse investigations were handled and processed within his Department. And secondly, where the Minister referred to the 'Law Reform Commission's Report' as the source of the advice or the standard guiding the proposed amendment concerning s.70(2) of the *Amendment Bill* – the immunity clause.²³⁶ The Minister appeared to assume that the other Members of the House were well acquainted with this report. Certainly, by that late stage of the deliberations, another Government Member had referred extensively to the Report in her Second Reading report. It is also significant to note that the Minister did not draw upon the Departmental Cabinet submission as a source of further evidence in his presentation of the *Amendment Bill* to the Legislative Assembly. Furthermore, there was positively no hint from the Minister of the tension in the advice received from the two main advisory Departments (Health and Community Development) in regard to the official Cabinet Submission on the *Amendment Bill*.

By contrast, some other Members of the Legislative Assembly drew quite heavily in their speeches from research reports and papers and from books about child abuse, and consequently gave the appearance of being more *au fait* than the Minister himself. Apart from those few instances there was no reference to comparative material in the debates.²³⁷

²³⁵ For example, the Memorandum dated 8 March 1982 arguing against mandatory reporting (DCD File CN83/0066, 'Child Protection - Introduction of Mandatory Reporting', Folios 23-25), and the Cabinet Submission arguing for it (DCD File, N85/0675, 'Child Welfare Act and Amendments', Folios 80-89).

²³⁶ The Report referred to is: ALRC (1981) Report on Child Welfare, No. 18, AGPS, Canberra.

²³⁷ See, for example the Second Reading speeches of Mrs O'Neil [NTLA 1983, PR: 2221-2222]; Mrs Lawrie [NTLA 1982, PR 2223-2224]; Mr B.Collins [NTLA 1983, PR: 2226-2227].

Community influence and Consultation

Regarding the influence of community/pressure group support or opposition to the proposed introduction of mandatory reporting, the Minister's contributions on this topic were implied rather than explicit. He opened by quoting a newspaper editorial expressing Police concerns about the alleged reluctance of the medical profession to report abuse, stated what he believed 'all right thinking people' believed on the issue of mandatory reporting, and implied that the medical profession would have much to say (presumably negative) about the *Amendment Bill*. The whole debate had the tone about it that Members assumed that they were doing something which would advance the cause of child protection and overcome professionals' reluctance to become involved, and that they not only enjoyed strong with community support in taking this approach but also had the influential example of most other Australian States as a policy guide.

However, in the legislative record there is little, if any, evidence of actual consultation on the *Amendment Bill*. It has been mentioned above that as far back as 1978 a detailed process of consultation had been recommended as part of the preparation for the enactment of new child welfare legislation in the Northern Territory. One senior welfare official had even suggested a Select Committee procedure for this. However nothing had come of the proposal.²³⁸ Certainly, in the case of the current measure there was no Select Committee Hearing on the *Amendment Bill*, nor any other formal process of hearings and submissions. A rather more centralist or 'top-down' approach seems to have been the order of the day.

The Government's view appears to have been that the general topic had been under discussion for a considerable time, the amendment had been announced but public comment had been minimal. Therefore it should proceed. As has been shown above, such consultation on the *Amendment Bill* as did occur appears from the record to have been purely internal (inter-departmental) and came somewhat late in the day *after* the *Amendment Bill* had been introduced in the Legislative Assembly. It is notable that the Minister did say in the Third Reading debate that he expected the medical profession to comment on the legislation which by now all had but passed into law, but that is hardly consultation *a priori*.

²³⁸ Memo dated 4 May 1977, DCD file, 'N85/0675', Child Welfare Act Amendments', Folio 26.

Conclusion: what the legislative record reveals

The three analytical questions concerning the Northern Territory Parliamentary process posed at the beginning of this chapter can now be answered. These were: how far research undertaken and advice given was influential in the political debate, what these debates reveal of the underlying policy-formation process, and the extent to which the legislative debate determined the policy outcome.

In regard to the research and advice question, we have seen that no specific research programme to inform the debate was requested or undertaken and therefore Departmentally provided research evidence, being non-existence could not influence the Debates. Further, the initial Departmental advice opposing mandatory reporting offered to the Minister of Community Development was rejected. The new advice was distinctly *post hoc* and was in any case not referred to by the Minister in the Legislative Assembly Debates nor made available to other Members.

On the question whether the record of debate gives an account of the policy development process culminating in the *Amendment Bill* it can be seen that internally Legislative Record provided a very sparse account of the development of the policy. In fact, the Minister's Second Reading speech was brief to the point of obscurity, conveying almost nothing of the background to the *Amendment Bill* or the issues underlying it. The remarkable failure or reluctance of the Minister to draw any connection between the death of Dean Long and the introduction of mandatory reporting has already been noted and remains a perplexing aspect of the entire legislative debate.²³⁹ It is perhaps best explained by a political desire not to appear to be reactive but rather to appear to be in control and enacting a measure justified in its own right.

As to whether the record reveals (or conceals) what is known from elsewhere (for example Departmental files, Ministerial briefing papers), about the process of the development of the policy eventually expressed in the *Amendment Bill* clear

²³⁹

Certainly there was no doubt in the minds of Officers of the Departments of Community Development and Health that this connection existed and that it was in response to Dean Long's death that mandatory reporting was introduced in the Northern Territory. See Remarks of Mrs M. Hamilton Acting OIC, Casuarina Office recorded at DoH File, 82/876, 'Child Abuse - Seminars and Correspondence', Folio 198. See also the press release/briefing note issued in the name of the Director of the Community Welfare Division to be found at DCD File N87/0070, Folio 144 which also makes the connection explicit.

conclusions can be drawn. It is apparent from the discussion in this and the preceding chapter that there was a significant disparity between the detail of the advice received by the responsible Minister and what was actually referred to by him in the Debates and made available for the information of other Legislators.

Finally, on the question of whether the process in Legislative Assembly marked a continuation of the development of the policy or merely 'formalised' something already decided at a political level it is clear that the political will of the Minister and the Cabinet was paramount. There were no discernible changes to the *Amendment Bill* as it passed through its stages in the Legislative Assembly, apart from the clarification of the immunity provision (Section 70). Even that change was not the result of debate within the House and generated no discussion whatsoever. Furthermore, in terms of the significance of this political fiat, once it was clear that the political course had been determined, the Department of Community Development appeared to have re-shaped its advice to accommodate the Minister's will.

It follows from this analysis that from a reading of the mere text of the parliamentary record relatively little insight would be available to the inquirer as to the process of policy-formation in general, or regarding the context, issues, costs and benefits, evidence adduced, advice received, consultations made, or the degree of community support or opposition to the measure, in particular. The reasons for this disparity between the 'reality' of the policy formation process outside of the law-making body,²⁴⁰ and what was reflected of this in the record of the legislative process, must remain speculative.

The particular policy outcome in the Northern Territory outcome may have been due to a number of factors, many of which appear to have been operating in the case under examination. These include the political or parliamentary culture and practice of the Northern Territory at the time, the recency of the responsible Minister's appointment to office, the lack of a commissioned research report, the failure of backbenchers to probe more deeply in their questions, the amount of time available for debate, the lack of alternative voices which might have been heard through a public consultation process which was also lacking, the influence of the example of other States, the wish by some politicians to avoid political damage that might arise

²⁴⁰ As reflected, interpreted, or abstracted in the (necessarily partial and incomplete) records of that process held on Departmental files, for example.

by appearing to oppose the *Amendment Bill*, the pressure of other legislative agendas, and the high degree of agreement which existed over the *Amendment Bill* (it received unanimous support in the Legislative Assembly at all stages).

Whatever the empirical balance between these factors, which will be further considered in the final chapter when the final key research question of this study is addressed, it is clear that there was considerably more to the advent of the Northern Territory's mandatory reporting policy and the emergence of the *Amendment Bill* by which it was enacted into law, than is revealed in the fifteen pages recording the Legislative Assembly Debates which marked the gestation of that policy.

In the next chapter we move from the 1980s to the 1990s and cross the Tasman Sea from Australia to observe the debate on mandatory reporting in that decade in New Zealand.

CHAPTER SEVEN

MANDATORY REPORTING – THE NEW ZEALAND EXPERIENCE

INTRODUCTION

In New Zealand it was also by proposed amendment to existing legislation that the issue of mandatory reporting came before the legislature in August, 1993. This occurred when the Minister of Social Welfare, Hon. Jenny Shipley, after a major review of existing legislation, introduced an *Amendment Bill* to amend the Children Young Persons and Their Families Act 1989 and which, amongst other changes, contained a proposal for the introduction of mandatory reporting

The next three chapters examine how New Zealand rejected mandatory reporting and what the documentary evidence reveals about the policy processes involved in that result. Following an examination of the background and main events leading to the introduction of the 1993 amendment to *The Children, Young Persons and Their Families Act 1989*, in particular the Ministerial Review of the Act (1992), the main focus is on a detailed examination of the Parliamentary record of debate.

As with the material from the Northern Territory, the New Zealand record is set into its historical context. The Parliamentary record is then examined against the background of what is known from extra-parliamentary documentary sources, such as Departmental files, to see how far it reveals the policy development process which produced the policy on mandatory reporting. In particular, it is asked whether this Parliamentary policy-making process marked a continuation of development of policy or merely confirmed a pre-determined policy position.

The investigation of New Zealand's path to rejection of mandatory reporting focuses on a number of key factors in the policy process and offers an assessment of the degree to which the debate was informed by these. These factors are the context of the debate, the issues identified and arguments adopted, costs and benefits, evidence adduced, advice received, consultation processes and community support or opposition to the measure. Emphasis is placed on the significance of New Zealand's Parliamentary Select Committee procedure, a step that was lacking in the Northern Territory, in determining the final outcome.

Historical Overview of New Zealand Child Abuse Reporting

New Zealand, a sovereign multi-cultural nation in the South Pacific, with a population in 1992 of 3,373,929, has had specialized child protection legislation since the early decades of the twentieth century.²⁴¹ The two specific pieces of New Zealand child protection legislation which pre-dated *The Children, Young Persons and Their Families Act 1989*, were the *Child Welfare Act 1925* and its successor *The Children and Young Persons Act 1974*. In neither measure was specific provision made for the reporting of child abuse.

The early 1990s was not the first occasion on which proposals for mandatory reporting of abuse, and controversy around the concept, had appeared in New Zealand. Ten years after the 1974 Children and Young Persons Act was enacted a further process of reform got under way with the drafting of a *Child Protection Amendment Bill* intended to lead to the amendment of the 1974 Act. The draft *Amendment Bill* included provisions for multi-disciplinary teams designed to coordinate child protection services.

Due to a change of Government in 1975 the *Amendment Bill* was not introduced.

The new Minister of Social Welfare, Mr Venn Young, decided upon a complete overhaul and replacement of the 1974 legislation. A document entitled 'Review of The Children, and Young Persons Legislation' was promulgated and eventually a draft *Amendment Bill* was tabled in House of Representatives at the end of 1986. The discussion document had suggested a mandatory reporting option and the *Amendment Bill* when introduced contained a widening of the categories of persons who would be mandated to report abuse. After widespread debate and some controversy the concept of mandatory reporting received favorable treatment from a Parliamentary Select Committee.

At the same time other developments were occurring in the child welfare and child protection fields. There was widespread concern over mono-culturalism and institutionalism in the Department of Social Welfare (DSW). In 1986 Puaoteata-tu, a Ministerial Advisory Committee Report called for greater levels of cultural recognition,

²⁴¹ Source: the New Zealand Official Yearbook, Wellington: Statistics New Zealand, 1994. Of this total Maori were 323,493; Pacific Islanders (Polynesian) 123,183; Chinese 37,689; Indian 26,979; Fijian 2,760 and Others 2,859,825.

and better use of family and community networks rather than institutional facilities. For example, this led to a greater stress on exploring extended family resources as a first option when children needed to be placed in care, and also to heightened levels of cultural awareness training for Departmental social workers and the hiring of more indigenous staff.

In 1987 another change of Government led to renewed efforts to re-shape the draft *Amendment Bill*. An Officials' Working Party was established and reported at the end of 1987. Their report recommended radical new approaches with regard both to child protection and youth justice policies and practices in New Zealand. They proposed a new model which moved away from primarily a 'child welfare' viewpoint to that of a 'family group perspective' designed to empower families and to emphasize collective and community responsibility for the welfare and protection of children. This philosophy was however held to be inconsistent with the assumptions underlying the earlier proposal to impose a mandatory reporting approach. Accordingly, the Officials recommended substituting voluntary reporting provisions in place of a mandatory reporting regime. These ideas were subsequently embodied in the path-breaking *Children, Young Persons and Their Families Act 1989*.²⁴²

The Children, Young Persons and Their Families Act 1989

The Children, Young Persons and Their Families Act has been described as 'the first serious attempt by a New Zealand Government to take into account the cultural values and perspectives of Maori and Pacific Island peoples in trying to deal with issues of care and protection'²⁴³ A significant aspect of the Act was the placing of responsibility for their children's welfare on parents and other family members, including culturally recognized family groups.²⁴⁴ The emphasis was on strengthening family capacity and building community resources while emphasizing extended families' prime role and responsibility in caring for their own vulnerable members.

As noted, any provision for mandatory reporting had been subsequently excluded from the draft *Amendment Bill* which eventually became *The Children, Young*

²⁴² This discussion follows the account given in Hewitt and Robb (1992: 53-54).

²⁴³ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley, February (1992: 4).

²⁴⁴ NZP 1993, PD 537: 17305 [Hon. Jenny Shipley, Minister of Social Welfare].

Persons and Their Families Act 1989. The main philosophical thrust of the 1989 Act was to separate care and protection processes from those of juvenile justice, to establish specific principles for the care and protection of children and young persons, for the handling of youth offending, the establishment of the family group conference as a statutory process for decision-making, and to make it possible for individuals and approved organizations to exercise custodial and guardianship functions under the Act.²⁴⁵ However, whilst almost universally hailed in principle²⁴⁶ the subsequent implementation of the Act was not trouble-free.²⁴⁷ When introducing the *Amendment Bill*, the Minister of Social Welfare said:

*... the implementation of the Act has been a major challenge for the statutory agencies responsible for giving effect to it, given the extent of the changes and the new processes it introduced. There has generally been strong support for the underlying philosophy and principles contained in the Act from all of those who have been involved. However, there is no denying that the Act is a large and complicated piece of legislation, and that there are some contentious issues concerning its practice. Those have been the focus of much news media and public concern.*²⁴⁸

A further change of Government occurred in New Zealand in 1990. Despite the fact that the original legislation had enjoyed bipartisan support, very early in its term in July 1991 the new National Government instituted a Ministerial Review of *The Children, Young Persons and Their Families Act* under the chairmanship of a retired Judge (Judge Ken Mason) who had a background in reporting on welfare-related issues, to investigate and report on the implementation of the Act in practice. The purpose of the review was to focus on the policies and procedures and practices of the Department of Social Welfare, the Department responsible for administration of the Act, and also on the New Zealand Police and other agencies with responsibilities under the Act.²⁴⁹

After consulting widely with Maori and Pakeha, individuals and community groups, Government departments and having considered more than 300 submissions, the

²⁴⁵ NZP 1993, PD 537: 17305 [Hon. Jenny Shipley, Minister of Social Welfare].

²⁴⁶ cf. NZP 1993, PD 539: 885 [Hon. Peter Gresham, Minister of Social Welfare]. See also the speech of the Minister of Youth Affairs at the First Reading of the *Children, Young Persons, and Their Families Amendment Bill 1993* where he described the Principal Act as 'the best Act of its type in the world'. NZP 1993, PD 537: 17318 [Hon. Roger McClay].

²⁴⁷ NZP 1993, PD 537: 17305 [Hon. Jenny Shipley, Minister of Social Welfare].

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

Mason Committee reported to the Minister of Social Welfare in February 1992. The Ministerial Review Team's Report (the 'Mason' Report), confirmed the soundness of the fundamental philosophy, objects and principles of the principal Act. However, many deficiencies were found with its implementation.²⁵⁰ The Report contained over forty recommendations including that mandatory reporting should be introduced into New Zealand's child protection law.

The Government's response

On 30th May 1992, three months after receiving the Mason Report the Government formally responded to its forty recommendations, indicating its approach to each. With regard to the recommendation that mandatory reporting should be introduced, the Government announced that it had decided neither to accept nor to reject the recommendation. Rather it would give further 'consideration, research and consultation' to the matter.²⁵¹ The history of these processes is outlined below, together with an analysis of significant policy papers which emerged from them, and these throw considerable light upon the eventual outcome of the policy debate on mandatory reporting.

It is clear that mandatory reporting and the other recommendations of the Mason Committee were not to be the subject of any knee-jerk legislative response. Indeed it was not until the 10th August, 1993, some fifteen months later, that legislative proposals emerged with the introduction of *The Children, Young Persons and Their Families Amendment Bill 1993* to the New Zealand House of Representatives.

Among the numerous clauses proposing amendments to the Principal Act only one clause covered mandatory reporting of child abuse. In introducing the *Amendment Bill* in Parliament the Minister of Social Welfare stated that the Mason Committee had 'come out strongly in favour of mandatory reporting of child abuse'.²⁵² She also noted that in place of the current legislation providing for voluntary reporting, the Mason

²⁵⁰ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon Jenny Shipley, February 1992. However it should be mentioned that Ministerial Review Team did recommend one major alteration to the Principles of the original Act namely that a statement of the principle of the paramountcy of the child should be inserted. This recommendation was followed in the subsequent legislation.

²⁵¹ Children, Young Persons and Their Families Act 1989, The Government's Response to the Report of the Ministerial Review Team, 30 May (1992: 2).

²⁵² NZP 1993, PD 537: 17306 [Hon. Jenny Shipley].

Committee had proposed an amendment to require designated categories of persons to report any child abuse they came across in the course of their professional duties.

However, despite the fact that her own Mason Committee had recommended mandatory reporting, there was clearly no enthusiasm on the Minister's part to support its introduction.²⁵³ The Minister noted the complexity, fine balance and controversial nature of the arguments about mandatory reporting and that professional, political, and public opinion on the matter was divided.²⁵⁴ She also pointed out that the proposed amendment raised issues under the *New Zealand Bill of Rights Act 1990* as well as privacy issues. Prophetically, she observed that:

*While mandatory reporting gives an unequivocal statement of society's abhorrence of child abuse, substantial implications and consequences flow on from the introduction of any such requirement. In the New Zealand context it can be argued that public education campaigns, better training of professionals and others involved in the area and competent and efficient care and protection services are just as important.*²⁵⁵

She explained that her Government after having 'given careful consideration to the matter'²⁵⁶ had nevertheless decided to include the mandatory reporting provision in the *Amendment Bill* so that it could be debated within the Select Committee process. Most significantly, in her First Reading speech the Minister undertook that the Government would 'be guided by the weight of evidence at the Select Committee'²⁵⁷ with regard to the question of whether the proposal to legislate for mandatory reporting should be retained in the *Amendment Bill*.

What eventuated in the Select Committee process, which lasted over a period of six and a half months,²⁵⁸ is a remarkable story of policy-making in a controversial and contested policy area. The Select Committee after careful consideration to the evidence and by discussion and argument, resulting sometimes in the reversal of previously held positions, came to a unanimous and bipartisan rejection of the proposal that mandatory reporting ought to be introduced in New Zealand.

²⁵³ Indeed, she did not personally support it. See NZP 1994, PD 545: 5215 [Hon. Jenny Shipley].

²⁵⁴ NZP 1993, PD 545: 17307 [Hon. Jenny Shipley].

²⁵⁵ NZP 1993, PD 537: 17306 [Hon. Jenny Shipley, Minister of Social Welfare].

²⁵⁶ Ibid.

²⁵⁷ Ibid: 17307.

²⁵⁸ That is from 10 August, 1993, when the *Amendment Bill* was referred to the Social Services Select Committee, to 24 March 1994 when it was 'reported back' to the House of Representatives.

A fuller account of how this outcome resulted, and what the Select Committee proposed instead of mandatory reporting, is provided in Chapter eight. First it is necessary to examine in the next section the origins of the 1992 proposal that mandatory reporting should be introduced in New Zealand.

Background to the Mason Report

It is important to understand the background to Judge Mason's inquiry and why his Committee was set-up. The Ministerial Review of *The Children, Young Persons and Their Families Act 1989* (the Mason Committee) was established by the Minister of Social Welfare, the Hon. Jenny Shipley, soon after she took office in the incoming National administration following the 1990 General Election. The main task of the Mason Committee as detailed in the 'Terms of Reference', were as follows:

1. *To investigate and report on the extent to which the policies, procedures and practices of the Department of Social Welfare, the Police and other agencies acting under The Children, Young Persons and Their Families Act 1989*
 - (a) *conform to the requirements of the Act;*
 - (b) *are consistent with the principles set out in the Act; and to*
 - (c) *give good effect to the objects set out in the Act.*

2. *To make recommendations on amendments to the Act, and changes in the policies, procedures and practices of the Department of Social Welfare, the Police and other agencies acting under the Act.*²⁵⁹

The Mason Committee was required to consider and make recommendations on proposals for amendments to the Act put forward by the Police, the Department of Social Welfare, the Commissioner for Children, and other agencies with responsibilities or functions under the Act. The Review Team began its formal work on 26 July 1991 and reported to the Minister on 24 February 1992, seven months later.²⁶⁰

The Mason Committee placed advertisements in metropolitan and some provincial newspapers calling for submissions and also wrote to several hundred individuals

²⁵⁹ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon Jenny Shipley, February 1992. In doing so the Ministerial Review Team was to consider proposals for amendments put forward by the Police, the DSW, the Commissioner for Children, and other agencies acting under the Act.

²⁶⁰ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon Jenny Shipley, February (1992: 4).

and organizations whom they believed might have had an interest in the Review. The Department of Social Welfare distributed copies of the 'Terms of Reference' and an explanation of the Review to its staff throughout New Zealand. Intense interest was aroused and numerous submissions were submitted. Appendix 7 of the Mason Report listed the names of individuals and organizations which made submissions: 314 written submissions were received and 589 oral submissions were made to the Mason Committee. This however does not include the names of some persons who appeared in support of a collective submission or as part of whanau at marae or hui attended by the Review Team.²⁶¹

The Committee traveled widely throughout New Zealand, and met with Department of Social Welfare staff at management and social worker levels, Police Officers, the Commissioner for Children, lawyers, community and volunteer workers, Care and Protection Resource Panels and other interested persons. Consultations were also held with Maori, Samoan, Tongan and Cook Island Groups and with family members (parents, children and young persons) who had experienced the workings of the Act.²⁶²

Some general indication has already been given about the reasons for the appointment of Mason Committee to examine *The Children, Young Persons and Their Families Act 1989*. It is important to ask what specifically gave rise to a need to examine the practical working of the *child protection* parts of the new legislation, given that the new legislation was only slightly more than two years old and that it had been the subject of great acclaim in New Zealand and overseas. For example, what led the Mason Committee to state in their Letter of Committal that, despite their early view that examination of policies, practices and procedures under the Act was premature, 'Events however have shown that the review was timely'?²⁶³ What was it about child protection in New Zealand that created the need for such an early review of a major and much-heralded piece of legislation?

²⁶¹ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley, February (1992: Appendix 7, 260-270).

²⁶² Letter of Committal, Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon Jenny Shipley, February (1992, Ibid: 5).

²⁶³ Letter of Committal, Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon Jenny Shipley, February (1992, Ibid: 5)..

Several pointers may be illuminating here. In the first place, there was at the end of the 1980s and the beginning of the 1990s, as the result of several notable and widely publicized cases an increased level of public concern over child abuse, especially sexual abuse. The Mason Committee referred, directly or indirectly, to a number of these publicized cases in their report. The horrific and well-publicized death of two-year-old Delcelia Whitika occurred in March 1991 and led to the high-profile, five week long murder trial of her step-father and mother in November and December 1991. This may well have been one of the 'events' that led the Mason Committee to consider that a review of legislation was timely.²⁶⁴ Furthermore, numbers of notifications of child abuse neglect and general child welfare concerns had risen steeply at the beginning of the 1990s from 5572 in the year to 30 June 1990, rising to 20,908, in 1991, to just under 25,000 at the end of the 1992 reporting year.²⁶⁵ Whatever the explanation for these figures, public concern was mounting. Judge Mason and his Committee were being looked to for answers.

The Mason Committee's Mandatory Reporting Recommendation

Although not specifically required by its terms of reference to consider the issue of mandatory reporting of alleged or suspected child abuse, the Mason Committee nevertheless decided to do so, and recommended as follows:

Recommendation 2

1. *That the Act be amended by including therein a new clause providing for the mandatory reporting of child abuse. Any designated persons who, in the course of carrying out their professional duties, have reasonable grounds for believing that any child or young person has been or is likely to be harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived shall report the matter to the Department of Social Welfare. The designated persons referred to above shall be:*
 - (i) *A registered medical practitioner.*
 - (ii) *A teacher.*
 - (iii) *A nurse (which will include a hospital nurse, a Plunket nurse, a practice nurse and a public health nurse),*
 - (iv) *A member of the New Zealand Police.*
 - (v) *A social worker as defined in the Department of Social Welfare Act 1971.*

²⁶⁴ See: Max, Lesley, 'The Killing of Delcelia Witaka: the lessons', *Metro*, June (1992: 132; 108-114); McLoughlin, David. 'The Canonisation of Tania Witaka', *North and South*, November (1998: 152; 32-41).

²⁶⁵ NZP 1993, PD 537: 17306 [Hon. Jenny Shipley].

How did the Mason Committee arrive at the conclusion that such a recommendation was necessary? In the first place, the Committee found that the question as to whether mandatory reporting should be required in New Zealand had been under discussion by 'many people over the past few years'.²⁶⁶ They noted that, although there was no requirement for mandatory reporting in current New Zealand legislation, Section 15 of *The Children, Young Persons, and Their Families Act 1989* provided for voluntary reporting of suspected child abuse.²⁶⁷

The Mason Committee had been advised in the Submission of the Department of Social Welfare, that although the 1986 *Children and Young Persons Amendment Bill*, which was the precursor to the eventual *Children, Young Persons, and Their Families Act 1989*, had proposed to introduce mandatory reporting by a wide range of professionals, the provision was removed from the *Amendment Bill* when it was revised. The Department stated that it did not believe that mandatory reporting provided any advantage in the New Zealand context.²⁶⁸

In their Report the Committee quoted extensively from the Department of Social Welfare Submission only to take serious issue with it on the question of mandatory reporting. The Department of Social Welfare had stated that, whilst under mandatory reporting it is clear that the number of notifications (of suspected child abuse) rises, so does the number of unsubstantiated cases. The gain under mandatory reporting being an overall increase in the number of abused children coming to official notice, but the loss being that scarce resources are tied up investigating and intruding into families where no abuse can be substantiated.

Further, with regard to the frequent claim that persons who are reluctant to report are more ready to do so when this is a legal requirement, the Department had argued that people do report when they are educated about abuse and have confidence in

²⁶⁶ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon. Jenny Shipley, February (1992: 15).

²⁶⁷ The sections reads as follows: '15. **Reporting of ill-treatment or neglect of child or young person** - Any person who believes that any child or young person has been, or is likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived *may* report the matter to a Social Worker or a member of the Police'. Italics introduced.

²⁶⁸ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 13).

the follow-up service. Where these prior conditions are not met professionals frequently do not report even when it is legally mandatory for them to do so. The Department also argued that, without any mandatory reporting requirement in New Zealand, reporting rates for suspected sexual abuse had nevertheless been climbing steeply in the past ten years, with the number of notifications of all forms of abuse and neglect rising from 6,000 in 1985 to 12,000 in 1990. The Department believed the New Zealand context of a small and relatively homogeneous population allowed the advantages of higher reporting rates to be gained through promotion of public awareness and professional education, without the disadvantages of compulsion.²⁶⁹

The Mason Committee stated that they were 'at a loss to understand the Department's view that *'mandatory reporting does not provide any advantage in the New Zealand context'*.²⁷⁰ The Committee could not agree that abused children would not be better off under a mandatory reporting regime and had the impression that the Department's objection was resource-based:

*We are left with the impression that the Departmental view is more concerned with 'scarce resources' and the increased workload, which may result from mandatory reporting rather than need to detect and respond to allegations of abuse... the Department of Social Welfare stance finds no support in the submissions received by us. We believe that scarcity of resources is an unacceptable reason for rejecting the concept of mandatory reporting. If the need is serious enough, resources must follow. The need is serious.*²⁷¹

The Report further noted that mandatory reporting had been in force in many American States and in several Australia states and accepted that although, initially, reporting rates rose, they then 'settled to a manageable level'.²⁷²

After quoting a Police doctor's submission that weekly instances were occurring of abused and damaged children 'and that nobody at Social Welfare seems to want to know'²⁷³ the Report reiterated the Committee's belief that the time for mandatory

²⁶⁹ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 13).

²⁷⁰ Ibid. Emphasis in original.

²⁷¹ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 13-14).

²⁷² Ibid: 14.

²⁷³ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 13).

reporting had arrived. Acknowledging that legislation *per se* could not outlaw child abuse. The Report nevertheless held that mandatory reporting was a symbolic statement that society would not tolerate further abuse once it had come to notice and would provide a legislative framework for professional handling of the case.²⁷⁴

As part of their case for recommending mandatory reporting, the Mason Committee then outlined three recent events that had attracted public attention. The first was a 1987 case of a two-year Maori/Samoan girl who had been the subject of numerous reports to Department of Social Welfare and who was killed by her mother while still under Department of Social Welfare supervision. A subsequent independent inquiry had made thirty-four recommendations designed to prevent such events occurring in the future. However, the Department had implemented only five or six of those, which suggested to the Committee that the Department 'was either unwilling or unable to give child abuse the high priority it deserves.' The second case involved the death of another two year old girl at the hands of her mother and step-father. Nothing had been reported to the authorities by concerned family members. The Committee did not know whether this was due to ignorance, lack of confidence or some other cause, but took the view that under their proposals a report to the appropriate authorities would have eventuated. The final case was a brief analysis of figures from the Otago Women's Health Survey released in December 1991. The Committee highlighted the contrast between the numbers of women reporting the incidence of abuse in their childhoods and the low percentage of those who had told any one about it. In the survey only 6% of sexual abuse incidents were ever reported to the Police.²⁷⁵

It is not clear, however, that any of these examples constitutes a case for mandatory reporting as an effective way of *preventing* child abuse. The Committee gave as its reason for including them:

To show that child abuse takes many forms, that it is often perpetrated by those who have strong, emotional connection with the victim, that in some cases, the consequences of persistent abuse can be fatal and that in general terms, the practice calls for community condemnation...The reported statistics of the Department of Social Welfare show an increasing level of abuse and we believe that this is

²⁷⁴

Ibid.

²⁷⁵

Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 14-15).

*matched by a growing concern for children's rights and the need to protect children and young persons.*²⁷⁶

It would appear from this statement that the Committee's reason for recommending the introduction of mandatory reporting was really a moral or symbolic one. That is to say, the policy of mandatory reporting has a symbolic value in society which the Committee regarded as sufficient to warrant its introduction. This understanding of the Committee's *rationale* for recommending mandatory reporting is reinforced by the following statements in their Report:

*However, unpalatable as it may be, the simple fact of the matter is that abuse of children in its various forms has reached a totally unacceptable level, to the extent that there is a need for a policy which spells out that the community will no longer tolerate this state of affairs.... We believe that philosophically the community would not only be registering its abhorrence of child abuse but would also be registering a powerful statement in support of children if it were to adopt the principle of mandatory reporting.*²⁷⁷

The Mason Committee went on to acknowledge that the issue was an emotionally charged one, and whilst there was a need to balance children's well-being against the need for professional confidentiality the interests of the child should remain paramount. The same applied where the privacy of the family was argued against reporting and against the authorities' warrant to investigate. In the Committee's estimation this argument was based on an illusion because 'intrusion is a small price to pay'²⁷⁸ to secure the well-being of the child. It was also observed that, in the case of certain infectious diseases, a form of mandatory reporting already applied in New Zealand.

The Committee also took the view, agreeing with the Medical Director of the Royal New Zealand Plunket Society (Inc.), Dr David Geddis, a prominent public supporter of mandatory reporting, that abuse created a tragic inter-generational cycle of repeated maltreatment with widening consequences. The Committee had been made aware of cases where abuse had not been reported by professionals because of fear of reprisals and believed that teachers, doctors and other groups desired the introduction of mandatory reporting.

²⁷⁶ Ibid.: 15.

²⁷⁷ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 16).

²⁷⁸ Ibid.

Quixotically, the Committee then went on to state that it was 'concerned to see that not all cases of child abuse need be reported. 'There might be 'one-off cases', unlikely to be repeated, in which the family could be offered and would accept help, and could be enabled to use its own resources, rather than those of the State, 'to resolve an isolated, non-serious case of child abuse.'²⁷⁹ Here some 'residual discretion' should remain with a professional whether to report or not.²⁸⁰ However, this caveat seems to fly in the face of the major concerns and the recommendation of the Mason Committee itself and to create loopholes that would undermine the policy they were advocating.

Finally, the Mason Committee discussed the issue of who should be mandated to report. They felt it was 'untenable to require all adults in the community to report'²⁸¹ and therefore restricted their recommendation to a number of professional groups whose members came into contact with children in the course of their work. Problems of definition were acknowledged, and the hope was expressed that, once the system was established, the range of mandated reporters could be widened. The Mason Committee considered the matter of whether there should be a sanction for failure to report or whether the matter should be left to professional disciplinary bodies. No final view was taken on this except that the penalty should 'reflect the serious nature of the obligation'.²⁸²

It is difficult not to agree with the Social Policy Agency comment on the Mason Committee's discussion of mandatory reporting that it:

*... raises a number of issues few of which relate directly to mandatory reporting. There is little analysis of the relationship between mandatory reporting and the delivery of services, nor is there any logical connection between supporting its introduction and the cases cited. The report implies that mandatory reporting is the solution to the social problem of child abuse and that it will lead to improved care and protection services.*²⁸³

²⁷⁹ Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 16-17).

²⁸⁰ Ibid.

²⁸¹ Ibid: 17.

²⁸² Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare, Hon. Jenny Shipley, February (1992: 17).

²⁸³ SPA of DSW, Report to the Minister of Social Welfare on Recommendation 2 of the Ministerial Review Team Report on the Children, Young Persons and Their Families Act 1989 - Mandatory Reporting, Report Number SSP/1 - 994/92, 18.

Herein lies the issue at the heart of discussions of mandatory reporting as a policy response to the phenomenon of child abuse: what is its demonstrable and instrumental connection with effective reduction of the incidence of abuse? Or since no such demonstrable connection exists, is the policy necessarily more of a socio-moral statement about society's repugnance towards child abuse? It has already been suggested that in fact the Mason Committee's rationale, so far as it was coherent, involved the latter: the imperative of sending a powerful moral and social signal about the non-acceptability, indeed the moral repugnance, of child abuse.

The next chapter considers the policy process that arose in response to the Mason Committee's mandatory reporting recommendation.

CHAPTER EIGHT

POLICY FORMATION IN RESPONSE TO THE MASON COMMITTEE RECOMMENDATION

This chapter traces the Governmental policy-formation process that occurred in response to the Mason Report. It particularly addresses the first two research questions,²⁸⁴ namely that related to the processes and considerations which led New Zealand adopt its final legislative position on mandatory reporting, and the question of what research was undertaken and advice given to inform the final political debate on mandatory reporting and how far it influenced the outcome?

The Ministerial Review Team (the 'Mason Committee') reported its findings to the Minister of Social Welfare, Hon. Jenny Shipley, on 24 February 1992. The Minister's Department prepared a draft Government response to the Review Team's recommendations for the Minister's advice and on 7 April Officials met the Minister to discuss this draft response. The Minister expressed satisfaction with the Department's draft response. She wished a high level of security to be applied to the document as she wanted to carefully manage the Report through the Caucus' Social Policy and Welfare Committee and to involve its members in decisions about proposed changes. The file note of this meeting indicates that mandatory reporting was going to be a high-profile issue and that the Government Caucus would decide any proposed policy changes.²⁸⁵ This is an important initial documentary indicator of the political role of the Party Caucus in the formation of policy.

The final version of the Official's report to the Minister, stamped 'Budget/Secret' as an indication of the security level desired by the Minister, was issued the following day, 8 April 1992.²⁸⁶ It noted that the Ministerial Review Team's report had been extensive and had made many useful recommendations but that the extent to which submissions had been critically examined was not always clear. Officials argued that in the case of mandatory reporting the Review Team had asserted a position 'without

²⁸⁴ These are set out in full at Page 12 *supra*.

²⁸⁵ Mason Report, Meeting with the Minister of Social Welfare, 7 April 1992, SPA File No. SS/300/18/Part 1, SS92/3107.

²⁸⁶ Report to the Minister of Social Welfare on the Report of the Ministerial Review Team on the Children, Young Persons and Their Families Act 1989 (Mason Report), SPA File No. SS/300/18/Part 1, SS92/3108.

much supporting argument'.²⁸⁷ Officials also corrected some errors in the Review Team's report, pointing out, for example, that mandatory reporting was not part of the child protection provisions in Victoria, Australia despite the Review Team's assertion to the contrary. The Officials' report set out each of the Mason Committee's recommendations, interpreted it, commented upon its significance, and made a recommendation regarding the appropriate Government response. An edited version of this report was not released to the public until 30 May 1992.²⁸⁸

With regard to the Mason Committee's recommendation on mandatory reporting Officials advised that this had 'considerable implications for care and protection services'.²⁸⁹ It required a change to the law which would obligate specified persons 'to report any type of abuse or neglect when they had reasonable grounds for believing it to have occurred'.²⁹⁰ Officials considered this a relatively 'high' test for reporting because the reporter had to have actual evidence to have 'reasonable grounds' to believe abuse had occurred. They commented that it was difficult to make an assessment of the resource implications of limiting the mandatory reporting requirement in this way. They hoped that where clear evidence of abuse existed reports would continue to be made voluntarily.

Officials considered that the Mason Report's discussion on mandatory reporting lacked analytic rigour and was logically weak. It gave 'an emotive exposition of the variety and potentially life threatening nature of child abuse with an assumption that a reporting law is the answer'.²⁹¹ As an example of weakness in the Mason Report Officials noted that it had cited three high profile cases in support of mandatory reporting where reporting had not been an issue. It had also used the doubled rate of voluntary reporting to the Department since 1985 to suggest that mandatory reporting was necessary, rather than as evidence of the success of voluntary reporting in tandem with community education. The Report had argued for mandatory reporting by citing examples of poor social work response from the Department *after* the

²⁸⁷ Report to the Minister of Social Welfare on the Report of the Ministerial Review Team on the Children, Young Persons and Their Families Act 1989 (Mason Report), SPA File No. SS/300/18/Part 1, SS92/3108, para.5.

²⁸⁸ Report to the Minister of Social Welfare, Mason Report and the Government's Response, SPA File No. SS/300/18/Part 1, 20.

²⁸⁹ Ibid.: 5.

²⁹⁰ Ibid.

²⁹¹ Report to the Minister of Social Welfare, Mason Report and the Government's Response, SPA File No. SS/300/18/Part 1, 20.

receipt of voluntary reports; and it had incorrectly stated the situation with regard to mandatory reporting in Victoria, Australia.²⁹² Finally, Officials advised the Minister that:

*Mandatory reporting is a very emotive issue. It seems a seductively easy way to do something important about child abuse. However, the advantages and disadvantages are finely balanced, and once enacted such reporting is unlikely to be removed. Taking further time to consider the options and to explore alternatives may be preferable. The Department recommends that this be done. It is likely for example that the results of new studies into mandatory reporting effectiveness recently commissioned in New South Wales, will provide useful information.'*²⁹³

The Officials' Report also appended information to assist the Minister in dealing with likely media enquiries and formally recommended that she delay making a decision on the issue of mandatory reporting. It was recommended that the Minister ask Officials to provide a further report by 1 July on overseas experience of mandatory reporting, in particular that of the Australian States and on the proposal made by the Review Team.²⁹⁴

On 24 April the Minister advised Departmental Officials that she had met with her Party Caucus to discuss the Government's response to the Mason Report recommendations. The Caucus wished to add further elements concerning mandatory reporting to specifications for the July report, namely, assessment of the implications for professional groups of introducing mandatory reporting, and consultation with those professional groups likely to be affected. Caucus also wanted to have a report on how far the education of professional groups might already have overtaken problems of abuse reporting and whether such education had potential to obviate any need for mandatory reporting. Finally, the views of the Police on mandatory reporting of suspected child abuse were to be sought. The Minister required urgent preparation of a paper to Cabinet which set out a formal Government response to the recommendations.²⁹⁵

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Report to the Minister of Social Welfare, Mason Report and the Government's Response, SPA File No. SS/300/18/Part 1, 20.

²⁹⁵ Memo from the Office of the Minister of Social Welfare, SPA File No. SS/300/18/Part 1, SS92/3109.

On 18 May 1992, Cabinet considered the recommendation that *The Children, Young Persons and Their Families Act 1989* be amended to incorporate mandatory reporting of child abuse, and:

- (a) *agreed to delay a decision on making reporting of child abuse mandatory for certain groups;*
- (b) *directed officials to provide a report to the Minister of Social Welfare by 1 September 1992 on:*
 - (i) *overseas experience of mandatory reporting, in particular that of the Australian States;*
 - (ii) *the proposal made by the Ministerial Review Team in relation to mandatory reporting;*
 - (iii) *implications of the introduction of mandatory reporting for certain professional groups (i.e. doctors, teachers, nurses, police and social workers);*
 - (iv) *the degree to which the education of professional groups:*
 - A has already overcome this issue;*
 - B could potentially overcome this issue;*
 - (v) *the resource implications of the introduction of mandatory reporting of child abuse.*
- (c) *directed officials to consult with appropriate professional groups in preparation of the report requested in 4(b) above; and*
- (d) *referred the issue of mandatory reporting to the NZ Police for their comments on the pros and cons of this issue.*²⁹⁶

The topic of mandatory reporting was clearly controversial. It involved a contentious policy issue and required legislative amendment with potentially significant resource implications if it was to be implemented.²⁹⁷ Government was neither going to rush the decision nor be persuaded merely by emotive arguments about the need to send powerful moral signals. Furthermore, the above Cabinet Minute extract shows that Cabinet required information from a considerable research programme to inform decision-making. The Government felt that a comparative appraisal, including information on the Australian experience, would be relevant to their examination of the issue of mandatory reporting. Resource implications were to be evaluated and a considerable amount of canvassing of professional and other opinion undertaken in the consultations directed by Cabinet.

²⁹⁶ Cabinet Minute CAB(92) M19/12/4 refers. Quoted in: Report to the Minister of Social Welfare on Recommendation 2 of the Ministerial Review Team Report on the Children, Young Persons and Their Families Act 1989 - Mandatory Reporting, SPA of the DSW, Report Number SSP/1- 994/92: 1-2.

²⁹⁷ Report to Minister of Social Welfare, Government's Response to the Ministerial Review Team Report on the Children, Young Persons and Their Families Act 1989 (Mason Report), 1 May 1992, SPA File No. SS/300/18/Part 1, SS92/3114.

It was hardly surprising therefore that it took the Social Policy Agency of the Department of Social Welfare rather longer than the originally mandated three and a half month period of research and consultation to provide the completed report.²⁹⁸ Finally submitted after seven months on the 17th of December, 1993, this was a bulky, 60 close-typed pages, piece of Christmas holiday reading for the Minister.²⁹⁹ Curiously, however, by the time the Report was submitted to the Minister the political decision to proceed to draft legislation containing provision for mandatory reporting had already been taken.³⁰⁰ The significant implications of this are examined in further detail later, but first the research programme itself and some of its findings are outlined.

The Policy Advice Research Programme

Of particular relevance to our second research question concerning the research undertaken and advice given to inform the final political debate on mandatory reporting and its influence on the outcome, is the approach taken by the Social Policy Agency of the Department of Social Welfare. In discharging its responsibilities to provide a comprehensive Report to the Minister³⁰¹ it formed and chaired an Inter-Departmental Steering Group including Officials from the Ministry of Education, the Department of Health, the NZ Police and the Children and Young Persons Service of the Department of Social Welfare.

The Committee's final Report represented the views of the Department of Social Welfare, with the views of other Departments being outlined where appropriate.³⁰² This Report is of considerable significance. It is the major piece of commissioned research and inter-Departmental policy advice received by the Government in response to the Mason Committee Report.

²⁹⁸ Report to the Minister of Social Welfare on Recommendation 2 of the Ministerial Review Team Report on the Children, Young Persons and Their Families Act 1989 - Mandatory Reporting, SPA of the DSW, Report Number SSP/1- 994/92.

²⁹⁹ As is evident from a scrawled note 'To read over the holidays'. This note is dated 21 December 1992 and is at the head of the File copy beside the Minister's signature signifying she had seen the Report.

³⁰⁰ See discussion on pp. 32-33 below.

³⁰¹ Report to the Minister of Social Welfare on Recommendation 2 of the Ministerial Review Team Report on the Children, Young Persons and Their Families Act 1989 - Mandatory Reporting, SPA of the DSW, Report Number SSP/1- 994/92.

³⁰² This was due to the fact that political events had overrun the Steering Group's timetable.

The comprehensive research effort underlying the Report was structured into seven principal components: (a) preparation of a literature review on overseas experience of mandatory reporting, in particular in Australia; (b) a discussion paper on the definition of mandatory reporting, underpinning philosophies and values, the role of the State, the advantages and disadvantages of mandatory reporting and a historical review of the New Zealand experience; (c) a survey investigation of the professional and resource implications for designated persons and organizations under mandatory reporting; (d) an assessment of the education and training needs of professionals under both mandatory and voluntary reporting regimes; (e) an analysis phase to develop a set of draft policy options informed by the outcomes of the previous components of the research programme including an analysis of survey results and finally (f) development of a policy options paper leading to the development of a Cabinet Paper. The components and findings of this research programme are now examined in some detail.

Literature review and analysis of mandatory reporting

This extensive, seventy-two page survey of international literature on issues of the mandatory reporting of child abuse and neglect was completed by external contractors over a period of six weeks. It surveyed the work of ninety-three authors in a total of a one hundred and four articles or documents.³⁰³ External contractors were employed for two reasons: the lack of available internal Departmental resources, and to provide a measure of independence in the review and its conclusions.³⁰⁴ The literature review identified reporting systems in the United States, Canada, the United Kingdom (England and Wales), and Australia. It noted that legislation for mandatory reporting by professionals currently applied in the United States of America, most Canadian Provinces and in five Australian States or Territories. The United Kingdom, Europe and one Australian State (Western Australia) had voluntary reporting systems. The State of Victoria was planning to mandate reporting for some professionals for certain types of abuse. In addition, between these various National and State jurisdictions there was wide variation in the types of abuse mandated and who was required to report it.

³⁰³ Hewitt and Robb (1992: 4).

³⁰⁴ SPA File Number SS/300/20 Part 2, Folio 40.

Problems and issues in child abuse reporting

After outlining the historical development of each national child protection system, the literature review analyzed types of child abuse reported, who reported it and what sanctions applied to those who did not report abuse. It found that seldom were there prosecutions for failure to report, and then only in the United States of America. Most jurisdictions relied instead on the application of moral pressure and professional sanctions applied to varying degrees.

Problems and issues identified in the literature common to all jurisdictions, irrespective of their reporting systems included problems in defining 'child abuse' (including difficulty of definition, and broad *versus* narrow definitions of abuse), reporting rates (statistics on reporting rates, the significance of reporting rates, unreliability of reports, causes of increased reporting rates), and the reported and actual incidence of child abuse. Also examined was data on abuse detection, impact of reporting systems on detection, the success of child protection systems in targeting abused children, the possibility of prevention of fatalities and reinjury. The possibility of prediction and diagnosis of child abuse, the investigation of abuse allegations (substantiated *versus* unsubstantiated cases, significance of substitution rates, the effect of reporting systems on delivery of investigation services) and reporting of child abuse with regard to who reports, whether reporting patterns exist, and factors influencing reporting behaviour were also discussed. Finally, issues regarding public education and the media, the provision and delivery of services, and the cost of protective services were canvassed.

Main findings of the literature review

The findings of the literature review and the analysis of mandatory reporting are significant in at least two ways – they were widely distributed to interested members of the public and to decision-makers and were influential in the subsequent Parliamentary debate. The review found that definitions of child abuse in legislation were fluid and subject to constant revision and change. Comparisons between jurisdictions and between research studies from different jurisdictions were difficult to make and were frequently invalidated by inconsistency of the definitions employed. The definition of abuse embodied in a reporting law, that is whether it was relatively broad or narrow, significantly affected the amount and the severity of the abuse

reported in a child protection system. This in turn affected client's access to limited intervention and treatment resources.

The Review noted that data on reporting rates was unreliable. Concerning the incidence of child abuse, it found that it was not possible to establish any relationship between increased rates of reported abuse and the rate of actual abuse underlying the reports, irrespective of the reporting system employed in a jurisdiction. Regarding detection of abuse, it was found that whereas under mandatory reporting more *potential* victims of abuse were identified, there could be no assurance that mandatory reporting accurately identified more *actual* victims and there was no evidence in the literature that reporting systems *per se* prevent the re-injury of already injured abuse victims. The prediction of abuse and its effective diagnosis were found to be difficult and complex. The literature review claimed that reporting by a wide range of informed persons rather than a narrow range of professionals had been shown to provide the most effective detection system.³⁰⁵

A most significant finding of the Review was that together with increased rates of reporting, however gained, came increased proportions of unsubstantiated cases. This led, in mandatory reporting jurisdictions, to complex efforts to adjust laws and investigation protocols in an attempt to increase the substantiation rate. A constant refrain in the literature surveyed was the poor quality of investigative services, no matter whether the reporting system was voluntary or mandatory. The Review found internationally, that most reports are received from non-mandated reporters even where mandatory reporting applies. The most significant reporting patterns in the literature were under-reporting of cases which were appropriate to report and over-reporting of inappropriate cases.³⁰⁶

A number of complex factors were found to affect reporting behaviour including personal prejudices and beliefs, professional ethics and practice codes, lack of confidence in the child protection system, and social distance. These factors all diminish child abuse reporting by professionals, whatever the legal requirements. The literature review identified the tendency of media reporting of child abuse in the United States, United Kingdom and Australia to give a high-profile to certain

³⁰⁵ See Report to Minister of Social Welfare, Mandatory Reporting Literature Review, Part A, 7 September 1992, SPA File SS/300/20 part 2.

³⁰⁶ Hewitt and Robb (1992).

sensational cases, with few positive consequences for any of the involved parties. Effective media campaigns were seen to be needed to provide a wider and more factual appreciation of child abuse issues, the nature of intervention, and higher levels of awareness of the safeguards and immunities available to reporters of abuse. Overseas studies showed that, as part of the overall child protection approach, public education strategies could lead to higher reporting rates.

The literature review noted that in both England and America dependence on reporting as a fundamental solution to child abuse limited the development of family support services and led progressively to over-reporting, excessive use of substitute care and failure to adequately develop preventative services. Nor was there any evidence that resources available to the child protection system were increased under mandatory reporting. The literature did not make it possible to identify, in strict financial terms, the relative cost effectiveness of mandatory versus voluntary systems of child abuse reporting.³⁰⁷

Criteria for a notional 'ideal type' of reporting system were then identified and, in a section on broader, trans-national issues, matters such as changing social definitions of abuse, the connection between poverty and neglect and the rights of the child were treated.³⁰⁸ The Review suggested that the relationship between child abuse and poverty made it more likely that children from lower socio-economic groups would be subject to reporting due to their minority status, relative lack of resources and greater exposure to surveillance. In these circumstances, the child protection system becomes one of the only available substitute channels for accessing resources for the disadvantaged.³⁰⁹

The Review also identified the 'symbolic' aspects of both mandatory and voluntary systems of reporting. It noted that any reporting system makes symbolic statements about a society's view of abuse and the nature and social locus of responsibility for others, especially the vulnerable. It concluded that the New Zealand legislation had always reflected current views and ideologies about children, the family and the

³⁰⁷ Hewitt and Robb (1992).

³⁰⁸ It is interesting to note that this aspect of the Literature Review contained in the August 1992 SPA report providing criteria for an ideal child protection system was referred to by one member in a speech in the First Reading debate on the Children Young Person's and Their Families Amendment *Bill*, on 10 August 1993, and read into the Parliamentary record. See NZP 1993, PD 537: 17317 [Lianne Dalziel].

³⁰⁹ Hewitt and Robb (1992).

definition and management of abuse. Although in practice, numerous problems and difficulties remained regarding the management of child abuse, it was argued that mandatory reporting was no panacea for these.

The Release of the literature review

When submitted in August 1992, the literature review and analysis of mandatory reporting strictly represented the view of the authors as research contractors, and not necessarily the views of the Department. In fact, the Social Policy Agency of the Department of Social Welfare had not yet finalized its view on mandatory reporting.³¹⁰ However, that this review and analysis of the literature was regarded as an important but potentially controversial piece of policy research was evidenced by the fact that, later in the year, on 7 September 1992, the Department felt called upon to offer advice to the Minister concerning its public release. News of the Review's existence had spread and there was interest in its contents among those being consulted by the project Steering Group, an Inter-departmental body.

The Department suggested that a copy be provided on a confidential basis to each member of the Steering Group. It was pointed out to the Minister that the Review might cause some controversy, particularly among advocates of mandatory reporting of suspected child abuse, in the light of its conclusions particularly (ix) which stated:

*The literature indicates that better training of professionals, good public education and improved data collection systems are the key elements in improving the effectiveness of the care and protection system, rather than mandatory reporting.*³¹¹

Furthermore, the Department might be accused of attempting to influence the outcome of the policy development process if the paper were published, but likewise, if the paper remained confidential, accusations of 'gagging' the information flow could arise.³¹²

The Social Policy Agency felt that publication of the literature review as an independent analysis would facilitate a more rational debate and recommended that the members of the Steering Group receive the Literature Review in the meantime, and that it also be distributed on request to those consulted by the Steering Group

³¹⁰ SPA File SS/300/20 Part 2, Para. 4.

³¹¹ Hewitt and Robb (1992: 62).

³¹² SPA File SS/300/20 Part 2, Para. 4.

and to 'other interested Parties'.³¹³ Although the Minister's signature is on the file copy of the report bearing this recommendation, there is no evidence of the Minister's formal decision in relation to these recommendations. However, from other evidence, it appears that the recommendation was followed and implemented almost immediately.³¹⁴

The discussion paper and consultations with Sector Groups

The Discussion paper was a second document intended as a resource for persons being consulted by the Steering Group. It briefly defined child abuse, mandatory reporting and voluntary reporting of child abuse; outlined the development of New Zealand's child abuse reporting requirements, outlined overseas child abuse reporting requirements, discussed reporting trends in New Zealand, USA and Australia and briefly discussed arguments for, as well as adverse implications of, mandatory reporting. A bibliography of twelve items was included alongside nine statistical appendices drawn from New Zealand and international sources. It appears that the discussion paper was circulated to all members of groups that were consulted by the Steering Group and was used as background material in forums and workshops.

In a report to the Minister of Social Welfare dated 5 October 1992 summarizing progress on the Social Policy Agency's mandatory reporting project, the Minister was advised that a consultation round with representatives of the Health sector, the Voluntary Services sector, the Education Sector, Maori Groups and organizations, Specialist groups or Individuals, Pacific Island groups and with iwi had been set up for the first half of the following month. In the case of iwi, consultations were already underway.³¹⁵ Results of the consultations appear only to have been formally reported to the Minister after the event because, as will be seen, the consultation round was overtaken by a political decision to proceed to legislation containing a mandatory reporting clause prior to the Research Project having completed its planned work.

³¹³ Report to Minister of Social Welfare, Mandatory Reporting Literature Review, Part B, 7 September 1992, SPA File SS/300/20 part 2.

³¹⁴ Report for the Associate Minister of Social Welfare, Briefing Notes on Progress in implementing the Recommendations of the Ministerial Review Team's Report on the CYPF Act, 16 September 1992 SPA File Number SS/300/18 Part 2, 3137.

³¹⁵ Report to the Minister of Social Welfare, Mandatory Reporting, 5 October 1992, SPA File Number SS /300/20 Part 3, Folio 34. 7.

The questionnaire

The questionnaire was a further tool, along with the Literature Survey and the Discussion Document, in the information-gathering and consultation process required by Cabinet. It will be recalled that Cabinet wished to ascertain the implications of the introduction of mandatory reporting for certain professional groups such as doctors, teachers, nurses, police and social workers; the degree to which the education of professional groups had already overcome this issue or could potentially do so; and the resource implications of the introduction of mandatory reporting of child abuse.³¹⁶ Topics surveyed in the questionnaire included service issues, professional issues, resources, education and training. In addition, respondents were asked for their attitudes on voluntary and mandatory reporting of child abuse and on the Mason Committee's proposal.

The questionnaire was sent to Government Departments, professional groups, organizations and individuals potentially affected by the introduction of mandatory reporting. 61 responses, including 21 unsolicited responses, were received in time to be collated. The unsolicited responses were not analyzed as they were evenly divided for and against mandatory reporting.³¹⁷

Analysis of the solicited responses showed divided opinions on mandatory reporting: 13 responses were in favour of mandatory reporting, 17 were opposed, while 10 responses indicated no formal policy on the matter of mandatory reporting. Reports to the Minister of Social Welfare on the 5 and 20 October contain detailed results and analysis of the questionnaire returns.³¹⁸

The policy options paper leading to the development of a cabinet paper

The Minister was advised in a Report dated 26 June 1992, seeking her agreement to an extension of the report timeframe from 1 September to 30 November 1992, that

³¹⁶ Report to the Minister of Social Welfare, Mandatory Reporting, 5 October 1992, SPA File Number SS /300/20 Part 3, Folio 34, 7.

³¹⁷ Report to the Minister of Social Welfare, Report on the Analysis of the Responses to the Questionnaire on the Mandatory reporting of Child Abuse, 20 October 1992, SPA File Number SS/300/20/Part3, Folio 34. This document contains a full description of the methodology of the questionnaire, copies of the questions asked on mandatory reporting, and a detailed analysis of responses received.

³¹⁸ Refer to the Report mentioned in the preceding footnote, and to Report to the Minister of Social Welfare, Mandatory Reporting, 5 October 1992, SPA File Number SS/300/20 Part 3, Folio 34: 15-32.

mandatory reporting was a complex issue involving the consideration of numerous issues by all affected groups and organizations to ensure that they were able to make an informed response on the question. Due to the fact that the consultation phase of the project necessarily involved a range of sectors, Departments and professional organizations, it was impossible to complete this phase within the original timeframe. The advice continued:

*Given the often emotive and inflammatory nature of the debate about mandatory reporting of suspected child abuse the process undertaken is as important as achieving the end result....The benefits of agreeing to a longer timeframe are that there can be adequate exposition and analysis of the issues concerning mandatory reporting of suspected child abuse that results in meaningful consultation and development of well grounded options. It lessens the risk of the accusation being made that the preferred position has already been determined and that the debate and consultation is 'window-dressing' ... The disadvantage of not meeting the 1 September deadline is that decision-making on mandatory reporting is delayed and this may be politically embarrassing and controversial.*³¹⁹

This request for a longer time-frame was agreed to.³²⁰ Extension of the deadline occurred because of the need for wide consultation with 'those who would be affected by the introduction of mandatory reporting in order to provide well-grounded policy advice on the issue.'³²¹ Work proceeded and the 20 August Progress Report to the Minister proposed that the final policy options paper would be finalized in the second half of November, with a Paper for the Minister to take to Cabinet by the 30 November, 1992.

The pressure of politics intervenes

It should be remembered that mandatory reporting of suspected child abuse was only one of a large number of care and protection and youth justice issues which were under review at this stage. A number of substantive amendments to *The Children, Young Persons and Their Families Act 1989* were being prepared, both resulting from the recommendations of the Mason Committee Review as well as others of a clarifying or 'machinery' nature arising independently.³²² Examples of the many

³¹⁹ SPA File Number SS/300/20 Part 2, 25, para.3.

³²⁰ SPA File Number SS/300/20 Part 2, 21.

³²¹ SPA File Number SS/300/20 Part 2, 25, para.5. See also SPA File Number SS /300/20 Part 1, 3.

³²² SPA File Number SS /300/18 Part 2, Folio 6. Examples of the many issues for which amendments were proposed included paramountcy of the child, the definition of 'social worker', support orders, and psychological examinations. There were also many youth justice issues being grappled in preparation for the amending legislation.

issues for which amendments were proposed included paramountcy of the child, the definition of 'social worker', support orders, and psychological examinations. There were also many youth justice issues being grappled with in preparation for the amending legislation. The Government Caucus was briefed on these on 28 September when it was still being proposed that a draft *Amendment Bill* be approved by Caucus and Cabinet in December, and be introduced into Parliament before the Christmas recess.³²³

It appears that political pressure for implementing the recommendations of the Mason Committee and mandatory reporting, in particular, was rising. For example, in an edition of the national morning news programme 'Morning Report' for Tuesday 27 October an interview was broadcast with the Medical Director of the Plunket Society, Dr David Geddis.³²⁴ In the interview, Dr Geddis found serious fault with the processes of *The Children, Young Persons and Their Families Act 1989*, criticized the state of child protection in the country describing it as 'chaotic'. Dr Geddis, who, as we have seen, had been influential with the Mason Committee, called for mandatory reporting of child abuse, pointing out that when in Opposition members of the current Government had said they would introduce mandatory reporting of suspected child abuse. Dr Geddis also claimed that when this had been previously proposed all affected groups had been in favour of the measure but Treasury had said that it was too expensive. Dr Geddis' broadcast occasioned an immediate briefing of the Minister from her Department which acknowledged that there was a dramatic increase in child abuse notifications and this had put strain upon the Department's ability to cope.³²⁵

On 1 October Officials were notified that the Caucus Social Policy and Welfare Committee had completed its deliberations on the substantive proposed amendments stemming from the Ministerial Review. A very tight time-frame existed if the Minister's wish to introduce an amendment into the Parliament before Christmas was to be met. On 5 October the Minister was provided with a paper updating her about the work on mandatory reporting, identifying the implications of proceeding with an amendment introducing mandatory reporting in December, outlining sector

³²³ SPA File Number SS /300/18 Part 2, Folio 16.

³²⁴ NewzTel Log: Ex Radio NZ 'Morning Report', Tuesday 27 October, 1992 on SPA File Number SS /300/20 Part 3, Folio 43.

³²⁵ SPA File Number SS /300/20 Part 3, Folio 43.

positions on mandatory reporting from the questionnaire analysis and proposing an alternative amendment on child abuse reporting that could be introduced in December.

Progress achieved included setting up an inter-Departmental Steering Group with representatives from Police, Ministry of Education, Department of Health, the NZ Children and Young Persons Service and the Social Policy Agency in order to ensure appropriate input and coordination between all affected sectors; completion of the international literature review; and surveying by questionnaire of sector group opinions. In addition, a consultation round with sector groups on their views on mandatory reporting was scheduled for November and consultation had begun with some iwi on their views about mandatory reporting.

The Minister was advised that proceeding with an amendment introducing mandatory reporting in December would leave little time for Cabinet to consider the issue between finalization of advice (by the end of November) and introduction of the legislation (mid-December). Similarly, there would be little time for public discussion should that be desired. Furthermore, provision of a clause providing for mandatory reporting of suspected child abuse in the draft legislation would tend to signal that it was Government policy to introduce it, with the result that Select Committee hearings would tend to focus on mechanics of making it work rather than on the question of the effectiveness or otherwise of mandatory reporting in improving child protection services.

The likelihood of strong iwi concerns was outlined to the Minister and how any premature or unilateral move might affect the credibility of the Government's wider partnership with iwi. Any hastening of this process would mean that the scope and detail of the proposed amendment would 'not have been subject to rigorous examination through the usual process of consideration of draft legislation by the involved sectors, Departments or organizations as well as other Government Departments'.³²⁶ This was felt to be especially significant given that with mandatory reporting of suspected child abuse, the definition of what is to be reported and by whom, is critical in terms of outcomes and effects.

³²⁶ SPA File Number SS /300/20 Part 3, Folio 43.

Lastly, the Minister was advised that the cost of introducing mandatory reporting of suspected child abuse was a major issue which had not been determined. It was clear that mandatory reporting of suspected child abuse would require more resources but most Departments had not concluded their work on this might be. The voluntary sector would also be affected by the cost of mandatory reporting of suspected child abuse.³²⁷

Alternative amendment

In view of such difficulties in the way of a December amendment on mandatory reporting outlined by the Social Policy Agency, the Agency then advised that if, despite the information given about the difficulties, the Minister still considered 'it necessary to be proactive on child abuse reporting in the December amending *Amendment Bill* the proposal suggested below may suffice'.³²⁸ The proposal was for amending legislation to be introduced which placed an obligation on the Director-General of Social Welfare to promote the reporting of child abuse via public education and the targeted education of professionals as well as the development of inter-agency protocols on abuse reporting.

In view of the subsequent history of the debate this was a significant piece of advice. It stated the substance of the alternative policy to mandatory reporting that was eventually advocated by the Select Committee. In their advice the Agency gave the advantages and disadvantages of their proposal. Advantages were that the amendment was proactive and could remain in the legislation, regardless of the final outcome of the reporting regime (voluntary or mandatory) finally adopted by Parliament. It was consistent with the cooperative, participatory and solution-oriented spirit of the existing legislation.³²⁹ It was also relatively simple and avoided definitional problems and it was likely to be less costly than mandatory reporting.

Disadvantages were that advocates of mandatory reporting of suspected child abuse would see it either as a stalling device or that mandatory reporting of suspected child abuse was not going to be introduced. Protocols and education, of themselves, would not necessarily change professionals' reporting behavior or ensure high quality delivery of child protective services. Protocols may be delayed and may not in any

³²⁷ SPA File Number SS /300/20 Part 3, Folio 43.

³²⁸ Ibid: Folio 33.

³²⁹ Children Young Persons And Their Families Act 1989.

case achieve the desired inter-agency cooperation. Setting up protocols and standards with non-government bodies could also present problems of jurisdiction, funding, monitoring and standards.

The Social Policy Agency then presented the Minister with three policy options with respect to mandatory reporting:

- (a) *The status quo. No legislative amendment in December, with the decision on the appropriate child abuse reporting regime being made by the Government after consideration of the officials' report. (This could include public consultation).*
- (b) *Amending legislation in December introducing mandatory reporting.*
- (c) *Amending legislation in December specifying the Director-General's responsibility to promote child abuse reporting.³³⁰*

The Agency advised that it did not support the introduction of mandatory reporting in the December *Amendment Bill* as the process of considering its merits had not been completed. Introduction of the measure at this stage would imply Government support for the measure and was considered a desirable feature in the child protection system and in New Zealand law. Considerable definitional issues were likely to arise in the Select Committee stage and these had not yet been tackled. Nor had the resource implications for Government Departments and the voluntary sector been determined. There was a public relations risk in the premature introduction of mandatory reporting. The alternative proposal would meet the need to be proactive on child abuse reporting and give time for deeper consideration of outstanding issues relating to mandatory reporting.³³¹

Despite this balanced and cautionary advice it appears that political pressures continued to impact on the process so that the measured process of consultation and analysis being advocated by Officials was short-circuited. On 9 November, Cabinet decided that a clause for mandatory reporting would proceed as part of the *Amendment Bill*.³³² Not surprisingly, details of this pressure, by whom and how it was brought to bear at the political level do not appear to be recorded on Departmental files, merely the result. It is one of the limitations of documentary research that

³³⁰ SPA File Number SS /300/20 Part 3, Folio 43.

³³¹ Ibid.

³³² SPA File Number SS /300/18 Part 2, Folio 42.

answers to certain questions, although directly related to the subject matter of the research, simply cannot be gleaned from the particular records to which the researcher has access, assuming they exist at all.

In fact, the Government was split on the matter of mandatory reporting.³³³ The point at issue being whether, in view of the already high level of reporting, mandatory reporting was needed, as against the view that even the last child who is being abused deserves to have that reported if a professional knows about the abuse.

A political decision is made

As the Minister would later reveal, the Government Caucus debated the issue for a long time. Due to the strength of the competing arguments it had been recommended by Caucus that mandatory reporting should be incorporated in the *Amendment Bill* for the Select Committee to consider.³³⁴ As a result on 6 November 1992 a report went to the Minister of Social Welfare attaching a Memorandum for her to take to Cabinet which included a recommendation on legislating for mandatory reporting of suspected child abuse.³³⁵ The Minister's recommendation to the Cabinet was that the *Amendment Bill* contain a proposal for the mandatory reporting of child abuse (physical, emotional or sexual abuse including neglect) and that, wider than the Mason Report recommendations, this reporting would be mandatory for Police, Departmental social workers, medical professionals, registered psychologists, teaching professionals (including child care workers, probation officers, workers in alternative care services, and lawyers). The effective date for the introduction of mandatory reporting of suspected child abuse was to be 1 July 1994.

The Cabinet approved this recommendation forthwith.³³⁶ The proposal to change the reporting law was publicly announced on 11 December 1992 along with decisions about strengthened provisions to allow Police questioning of young offenders and the 'paramountcy of the child' in child welfare legislation. All three of these matters had

³³³ This admission was made by the Minister of Social Welfare in her speech of at the conclusion of the First Reading Debate on the Children Young Persons and Their Families Amendment *Bill* NZP 1993, PD 537: 17325 [Hon. Jenny Shipley, Minister of Social Welfare].

³³⁴ In a radio interview in February the following year. See transcript: Newztel Log of Radio New Zealand 'Good Morning New Zealand' interview broadcast Wednesday 3 February 1993, on SPA File, /300/20 Part 4, Folio 9.

³³⁵ SPA File Number SS/300/18 Part 2, Folio 39.

³³⁶ Ibid: Folio 42.

been of much political significance. It was now nearly a year since the Mason Review Team had reported and politically some action was required to be seen to be happening. The Government, by making this announcement in time for Christmas, had now grasped the nettle and was seen to be taking action.

Consequences for the policy advice project

Political considerations had now overrun the Project Team's careful formulation of advice based on evidence and research. A Report to the Minister of Social Welfare dated 10 November 1992 sought decisions regarding the future of the project.³³⁷ It summarized the work completed up to that point which included the literature review and analysis of mandatory reporting, development and distribution of a questionnaire and discussion paper to all involved sectors; development of a discussion paper for consultation with some iwi and iwi-based groups; analysis and report on questionnaire responses; obtaining of costing information, and setting-up and partial completion of a round of consultation with key sectors. The Minister was reminded that three further meetings of the Inter-Departmental Steering Group were still scheduled and its members were yet to be informed of Cabinet's decision.

The Minister was also informed that, three sector consultations had been held (Health, Voluntary Social Services and Education), but three others had been cancelled (Maori, Individuals and other sectors, Pacific Islanders) because invitations to participate in the forums had 'indicated that participants views were being canvassed prior to Government decision-making on the Officials report in December 1992.'³³⁸ It is interesting to note that the Minister did not appear to agree with this decision or to sympathize with the understandable embarrassment of her Officials at the necessity of canceling a consultation process mid-stream.³³⁹ This throws, perhaps, an interesting light on contrasting views on the nature and significance of 'consultation' held by the advisers and the Minister.

The options were to complete the Officials' Report, as originally directed by Cabinet, including information from those consultations already completed by 6 November; or

³³⁷ SPA File Number SS /300/20 Part3, Folio 59.

³³⁸ SPA File Number SS /300/20 Part3, Folio 59. Emphasis introduced.

³³⁹ Ibid. A hand written marginal note on the File copy of the report from the Minister stated that she still did not understand why the balance of the meetings had not been held as she would have appreciated the Department being able to advise her on the position on this important matter of the bodies whose consultations had been cancelled.

to wind-up the Project immediately. The former course was recommended and was accepted by the Minister and on 17 December the Minister received the final Report on Recommendation 2 of the Mason Report from the Project Team.³⁴⁰

Despite Government's original intention to introduce the legislation into the House before Christmas, the making of the announcement on 11 December was as much as could be achieved under the circumstances. It would not be until fully nine-months later, in August of the following year, that the process of gestation was complete and the *Amendment Bill* was ready for Parliamentary scrutiny. It is to this aspect that attention is turned in the following chapter.

³⁴⁰ Report to the Minister of Social Welfare on Recommendation 2 of the Ministerial Review Team Report on the Children, Young Persons and Their Families Act 1989 - Mandatory Reporting, SPA of the DSW, Report Number SSP/1- 994/92.

CHAPTER NINE

INTRODUCTION OF THE AMENDMENT BILL, THE SELECT COMMITTEE DEBATE AND THE LEGISLATIVE AFTERMATH

INTRODUCTION

This chapter traces the fate of the Mason Committee's mandatory reporting recommendation and focuses particularly on the passage of the *Amendment Bill* which incorporated the recommendation and thus involves direct consideration of several of our key research questions.³⁴¹ It examines the Parliamentary rejection of the recommendation and gauges the influence of research evidence gathered by the Department and advice given to the Minister. It also asks how far the Hansard reflects what was discovered from Departmental files about the development of the policy option initially proposed in the *Amendment Bill*. Finally, it inquires whether Parliamentary processes significantly altered the mandatory reporting proposal or merely gave formal approval to a decision pre-determined elsewhere.

The political decision to proceed with an *Amendment Bill* incorporating mandatory reporting having been taken, a further two thirds of a year elapsed before draft legislation was placed before the House of Representatives. In the intervening period a number of matters arose which required official attention. Not least of these was securing a slot on the Parliamentary calendar³⁴² and the not inconsiderable task of drafting the legislation which was afflicted by considerable delays.³⁴³

Inconsistency with the New Zealand Bill of Rights Act 1990

A further significant question was the relationship between the proposal to introduce mandatory reporting and the requirements of the *New Zealand Bill of Rights Act 1990*.³⁴⁴ Legal analysis of the proposed mandatory reporting measure by the

³⁴¹ Refer Page 12 *supra*.

³⁴² Request for a *Amendment Bill* to be included in the 1993 Legislative Programme, 15 January, 1993, SPA File No. SS/300/18/Part 3, Folio 6.

³⁴³ A first draft of the *Amendment Bill* had been supplied to the Department by early June 1993 but discussions with the other Departments and the Office of the Parliamentary Counsel were continuing into late July. Report to the Minister of Social Welfare on the Progress of the CYPF *Amendment Bill*, SPA File No. SS/300/18/Part 4, Folio, Folio 33 and Folio 47.

³⁴⁴ Report to the Minister of Social Welfare on Mandatory Reporting Provisions in the CYPF *Amendment Bill*: Objections by Justice that the Provisions Breach the New Zealand *Amendment Bill* of Rights Act 1990, SPA File No. SS/300/18/Part 4, Folio 14. see Appendix 3 for further details of the legal issues at stake here.

Department of Justice held that it was inconsistent with the provisions of the *New Zealand Bill of Rights Act 1990*. Not only did the mandatory reporting proposal seriously infringe New Zealanders' legal right to freedom of expression but it was found that the proposed *Amendment Bill* also did not meet the main requirement of any abuse reporting regime, namely that it should be demonstrably necessary or would definitely reduce injury or abuse. Accordingly the Attorney-General advised Parliament he was:

*drawn to the conclusion that the available evidence shows that even with the intrusion into freedom of expression, the provision as drafted does not appear to meet the most important objectives of a mandatory reporting regime – that is, the increased detection and prevention of child abuse Therefore...the Attorney-General has formed the view that the new section 15B in clause 4 of the Amendment Bill appears to breach section 14 of the New Zealand Bill of Rights Act 1990. That new section cannot be justified under section 5 of the New Zealand Bill of Rights Act as a reasonable limit in a free and democratic society.*³⁴⁵

It might have been thought that such high-level legal criticism of the weakness of the mandatory reporting provision in the *Amendment Bill* and the difficulties which mandatory reporting in general contained for a democratic society, might have been conclusive and sufficient to consign the measure to oblivion. However, this did not happen. The progress of the *Amendment Bill* continued and when the Attorney-General reported to Parliament that there was a conflict between the mandatory reporting provisions of the *Amendment Bill* and the *New Zealand Bill of Rights Act* the matter hardly featured in debate. No Government Member, and only one Opposition Member, made any further reference to this infringement. The Opposition Member joined the Attorney-General in the view that what was proposed in mandatory reporting was an infringement of the basic democratic right of freedom of expression and agreed that voluntary reporting was the better means of protecting children.³⁴⁶ Perhaps surprisingly, the inconsistency of mandatory reporting with the *New Zealand Bill of Rights Act* appears to have played little further part in the final policy making process.

³⁴⁵ NZP 1993, PD 537: 17315.

³⁴⁶ NZP 1993, PD 537: 17324. [Hon. Margaret Austin].

The parliamentary debate - first reading

The Children, Young Persons and Their Families Amendment Bill was introduced into the New Zealand House of Representatives and given its First Reading on 10 August 1993. Introducing the *Amendment Bill* the Minister explained that, following the Mason Report the Government had decided to include a mandatory reporting clause so that it could be debated within the Select Committee process. Significantly, she added that in deciding about mandatory reporting the Government would 'be guided by the weight of evidence at the Select Committee'.³⁴⁷ This was intended to make it clear that mandatory reporting of child abuse was not necessarily Government policy. Rather, it was the Government's view that the matter should be debated.

More cynically, one Member of the Opposition described the measure as 'political posturing'. She considered there was no chance that the amendments could come into force by the date stated in the *Amendment Bill* and noted that while:

*... the Government believes it is being seen to do something when the reality is that it is doing nothing It is perfectly clear that the Minister does not support the provisions set out in clause 4 ... which would introduce mandatory reporting. So why do we have to go the charade of sending this clause to the Select Committee to consider ... all of the evidence on mandatory reporting has already been collected and reported back to the House ... in 1986-87. The evidence is all there in front of the committee, and there is not a shred of evidence to support any change to the law. I think that this measure is a cop-out, and I repeat that it is blatant politicking Nobody will come forward with alternative evidence.*³⁴⁸

The Minister advised the House that the mandatory reporting of child abuse was to be treated as a matter of conscience: Government Members could form their own opinions and vote freely on the issue without having to adhere to any party line. Later, it was advised that Opposition Members would also enjoy this freedom.³⁴⁹

The Opposition Social Welfare spokesman welcomed the opportunity to discuss mandatory reporting of child abuse noting that the proposal to introduce mandatory reporting would be a significant issue.³⁵⁰ He emphasized that there would be a wide range of views within his Party Caucus, just as in the community at large. He

³⁴⁷ NZP 1993, PD 537: 17307 [Hon. Jenny Shipley, Minister of Social Welfare].

³⁴⁸ NZP 1993, PD 537: 17323 [Hon. Margaret Austin].

³⁴⁹ NZP 1994, PD 539: 719 [Hon. Clive Matthewson].

³⁵⁰ NZP 1993, PD 537: 17310 [Hon. Clive Matthewson]. 17311.

reframed the question of mandatory reporting of child abuse as follows: 'it is not just a question of whether it would be useful, it is a question of whether it would be of merit or whether it would be harmful'.³⁵¹ He recalled that the 1986 legislation to reform the New Zealand child welfare legislation had contained provisions for mandatory reporting of child abuse but that these had been removed during the passage of the legislation and had been replaced by a voluntary reporting regime.

Confirming the view of the Mason Committee that it was not an argument against mandatory reporting of child abuse to say that more resources would be required, the Opposition Spokesman commented:

*I agree with the comment made in the Mason report that arguments about resources are not sufficient; that if more resources are required, more resources should be supplied. It is not a sufficient argument against mandatory reporting that it will require more resources. It is certainly an argument that mandatory reporting will not be of any use without extra resources and that mandatory reporting may, indeed, be harmful without appropriate extra resources. However, that is not an argument against mandatory reporting in itself. I agree with the Mason committee on that matter, and certainly, we should ensure that if we do proceed down that path we must be absolutely clear that extra resources will be required and appropriate resources must be supplied.*³⁵²

Later, he politicized the debate by claiming that while all Parties stated that they wanted to take measures to reduce violence and abuse in society, the only effective way to do this was through the development of comprehensive social policy which would address issues of income support, poverty, housing, health care, education and child care.³⁵³ Other Labour speakers associated themselves with this view and supported the same line of argument.³⁵⁴

The fact that the Opposition spokesperson made this claim, whereas the Minister's remarks had been confined to the more technical aspects of the *Amendment Bill*, reflected the wider ideological differences which existed between the Government and Opposition Parties at the time. The Labour Party was more inclined to advocate, at least at a rhetorical level, comprehensive, interventionist policies designed to

³⁵¹

Ibid.

³⁵²

NZP 1993, PD 537: 17310-17311 [Hon. Clive Matthewson]. It should be noted that research surveyed in Chapter Two underlined that additional resources do not automatically accompany the introduction of mandatory reporting. See Besharov (1985); Ainsworth (2002).

³⁵³

Ibid.

³⁵⁴

NZP 1993, PD 537: 17317 [Lianne Dalziel]; 17324 [Hon. Margaret Austin].

address underlying social problems *via* State action. On the other hand, the Government was seeking to implement anti-welfare policies designed to: reduce the size and spending of Government, accelerate privatization and to devolve responsibility for managing social problems away from State Agencies to individuals and communities.³⁵⁵

Finally, like several other Opposition speakers in the First Reading debate, the Opposition Spokesman on social welfare was critical of the delay in bringing the measure to Parliament. He contrasted this with the speed at which the Government now wished to proceed.³⁵⁶ The Amendments were intended to come into effect on the 1 January 1994, but six weeks would be required for the public submissions prior to detailed consideration of the *Amendment Bill* by the Select Committee. An election was also imminent and this would affect the Parliamentary timetable.³⁵⁷ The Opposition Spokesman said that the Government had received the Mason Committee's Report in February 1992 and kept it secret until it issued its response in May 1992.³⁵⁸ A further fifteen months had now elapsed. He therefore doubted that the 1 January 1994 implementation deadline could be met.

From the Government's point of view these delays were framed differently. Interjecting, the Minister implied that the reasons for the delay in introducing the *Amendment Bill* were the contentious nature of mandatory reporting and the time required for the subject to be properly researched.³⁵⁹ The main item to which the Minister referred in this context was the August 1992 international literature review³⁶⁰ prepared for the Social Policy Agency and now distributed to all Members of Parliament.³⁶¹ This survey of research evidence was significant as it is clear from the course of the Parliamentary debate that it was influential in forming some Member's views with regard to the mandatory reporting issue.³⁶²

³⁵⁵ See, for example, Castles and Shirley in Castles et. al. (1996: 90 and 104).

³⁵⁶ NZP 1993, PD 537: 17312-17313.

³⁵⁷ This eventually took place on the 30 September (1993).

³⁵⁸ A sign of the political sensitivity of the issue.

³⁵⁹ NZP 1993, PD 537: 17316 [Interjection of Hon Jenny Shipley, Minister of Social Welfare].

³⁶⁰ Hewitt and Robb (1992).

³⁶¹ NZP 1993, PD 537: 17316 [Lianne Dalziel].

³⁶² See: for example, NZP 1993, PD 537: 17324 [Hon. Margaret Austin], 537: 17325 [Hon. Jenny Shipley, Minister of Social Welfare], and see also NZP 1994, PD 539: 722 [Judy Keall], p.725 [Hon. Michael Cullen], 539: 890 [Clive Matthewson], 539: 4723 [Janet Mackey].

Following the Minister and the Opposition spokesperson on Social Welfare, only six further Members spoke in the First Reading debate, before the Minister exercised her right of reply. Government speakers stressed the Government's open mindedness on the issue of mandatory reporting, the desirability of re-examining all the arguments with regard to it, and the importance of the Select Committee in considering impartially the evidence that would come before it.³⁶³ Interestingly, no Government speaker made any reference to research findings or overseas material at this point.

Of the three Opposition speakers, two made extensive reference to research evidence from the Social Policy Agency Report which the Minister had just been circulated to Members, and all three made reference to comparative data or material from other countries in making their arguments.³⁶⁴ The first speaker, after summarizing the history of events following the Mason Report and acknowledging the contentious nature of mandatory reporting as an issue, expressed concern that the debate on mandatory reporting could 'become an excuse for being seen to be doing something, without doing anything.'³⁶⁵ She then read into the Parliamentary record a reference to the nine criteria for an ideal child protection system set out in the Literature Review³⁶⁶ and quoted from the sections of that Report on definitions of 'abuse' and 'unsubstantiation' of child abuse reports.

Another Opposition speaker, a former Minister of Education, also referred extensively to research evidence, quoting passages from the Social Policy Agency's commissioned literature review and its analysis of mandatory reporting. She noted from this research that not all Australian States had instigated mandatory reporting and favorably contrasted voluntaristic reporting frameworks operating in Europe with the position of those Australian states which had adopted mandatory reporting. She cited key evidence against mandatory reporting: that although higher rates of reporting resulted from mandatory reporting so also did higher rates of unsubstantiated cases, and she pointed out that with voluntary reporting the rate of reporting was still high but involved a much lower rate of unsubstantiated cases. Other research conclusions mentioned were that under mandatory reporting

³⁶³ NZP 1993, PD 537: 17318 [Hon. Roger McClay], 537: 17323 [Roger Sowry].

³⁶⁴ NZP 1993, PD 537: 17316 [Lianne Dalziel]; 537: 17321 [Hon. Dr Michael Cullen], 537: 17324-17325 [Hon. Margaret Austin].

³⁶⁵ NZP 1993, PD 537: 17316 [Lianne Dalziel].

³⁶⁶ Hewitt and Robb (1992).

excessive resources were used up investigating unsubstantiated cases and that, in any case, most reporting was done by persons who were not mandated to do so.³⁶⁷

The same Member also quoted from the research literature claims that mandatory reporting and child abuse systems in the United States, the United Kingdom and Australia 'have become a modern instrument for controlling poor people and for removing poor people from their families. 'It might be considered that mandatory reporting may make child poverty worse 'by persuading the community and professionals that it is possible to control child abuse without dealing with poverty issues'.³⁶⁸ The Government was accused of engaging in symbolic gestures which took no account of the intrusive nature of mandatory reporting and of the misuse of resources it was claimed to involve.

The third Opposition speaker was the former Labour Minister of Social Welfare under whose charge the Principal Act had passed into legislation in 1989. He took an historical swipe at those whom, he claimed, having previously failed to have mandatory reporting included in the 1989 Act, were now trying to introduce it again. He referred to evidence which he claimed made the case for voluntary rather than mandatory reporting even stronger over the intervening time: under voluntary arrangements of the 1989 Act there had been significant increases in reporting rates, and in Australia mandatory reporting provisions had not afforded to children increased protection. He prophesied (correctly) that evidence to the Select Committee would, if properly presented, convince them not to proceed with mandatory reporting.³⁶⁹

The final Opposition speaker was another a senior parliamentarian, formerly the Labour Minister of Health, who took the view 'that it was no bad thing that a difficult and important issue like this is to be referred to the Select Committee, despite the fact that this had already happened in the previous decade and also had been addressed by the Mason Committee's enquiry. He considered that it was important for the matter to go before the Select Committee as:

that what is described as mandatory reporting of child abuse is frequently not that at all ;it is not mandatory reporting of the fact of child abuse Rather the Amendment Bill invites Parliament to enact

³⁶⁷ NZP 1993, PD 537: 17323 [Hon. Margaret Austin].

³⁶⁸ Ibid. 17324-17325.

³⁶⁹ NZP 1994, PD 539: 725 [Hon. Dr Michael Cullen].

*a compulsory requirement to report the suspicion of child abuse. The suspicion has to be on reasonable grounds, but nonetheless, it is often merely a suspicion. I think that, in reality, there is all the difference in the world between those two things.*³⁷⁰

Referring to an American work entitled *Beyond the Best Interests of the Child*³⁷¹ he stressed the cautionary principle of the need to balance both children's need for continuity of care and parents' rights under the law, with the State's right to intrude into families by investigating abuse reports.³⁷²

In summing up the debate of the First Reading, the Minister of Social Welfare confirmed that there was a split in the Government over the issue of mandatory reporting.³⁷³ She explained the inclusion of the proposal for mandatory reporting as follows:

*Because of the evidence presented in 1986-87, and given that we have a new law in place and have carried out an international search on this matter – which I have made available to all Members for their consideration and reflection - it is quite proper that the matter go to a Select Committee.... The new legislation is unique to New Zealand, so when one talks about an international search it cannot be said automatically that what happens overseas applies to a jurisdiction like our own. It is quite proper that the Select Committee should have an opportunity to hear that evidence and for the Government to be able to come to its decision.*³⁷⁴

She concluded by expressing pleasure that the Opposition had indicated that in the Select Committee they:

*would keep an open mind and listen to the evidence. That is important, and, in due course, we will decide whether or not the current Act serves us well, or whether a mandatory reporting provision will be needed.*³⁷⁵

As mentioned, at the very end of the First Reading debate the Attorney-General, who had been away from Parliament on urgent business, obtained the permission of the House to reiterate the main conclusions regarding the incompatibility of the mandatory reporting provision in the *Amendment Bill* with the *New Zealand Bill of Rights Act 1990*. He offered three remedial amendments for consideration by the

³⁷⁰ NZP 1993, PD 537: 17326 [Hon. David Caygill].

³⁷¹ Goldstein, Solnitt and Freud (1979).

³⁷² NZP 1993, PD 537: 17326 [Hon. David Caygill].

³⁷³ NZP 1993, PD 537: 17325 [Hon. Jenny Shipley, Minister of Social Welfare].

³⁷⁴ Ibid.

³⁷⁵ NZP 1993, PD 537: 17325 [Hon. Jenny Shipley, Minister of Social Welfare].

Select Committee to overcome this problem but there is no evidence that any of these suggestions were explored further.³⁷⁶

On the same day as it was introduced and after several hours of the First Reading debate, *The Children, Young Persons, and Their Families Amendment Bill 1993* was referred to the Social Services Committee.³⁷⁷ The Select Committee was composed of Members from both sides of the House.³⁷⁸

The select committee process and report

The role of a Select Committee in the New Zealand Constitution is to make a careful study of a Bill introduced into the House and to decide what amendments, if any, should be made and to then report back to the House with any proposed amendments. To assist in such deliberations Select Committees call for public submissions as well as for reports from relevant Government Departments. Submissions may be made in writing or orally, and Select Committee Members frequently have the opportunity to question witnesses on their views.³⁷⁹

Following the General Election of September 1993, which returned a National Government to office, a new Minister of Social Welfare, Hon. Peter Gresham, had been appointed. On 24 March 1994, six months after the *Amendment Bill* had been referred, the Social Services Committee reported back on *The Children, Young Persons, and Their Families Amendment Bill 1993*.³⁸⁰ Seventy-four submissions on all aspects of the *Amendment Bill* had been received by the Select Committee which had heard evidence for fourteen hours and deliberated on the *Amendment Bill* for an additional twenty hours. Of the submissions on mandatory reporting, thirteen supported and nineteen opposed the proposal unconditionally. A further twenty-one submissions opposed aspects of the proposed mandatory reporting regime.³⁸¹

³⁷⁶ NZP 1993, PD 537: 17327- 17328 [Hon. Paul East, Attorney-General].

³⁷⁷ NZP 1993, PD 537: 17328.

³⁷⁸ This was prior to the introduction of mixed-member, multi-party proportional representation (MMP) in New Zealand pursuant to the Electoral Act 1993. The first general election under MMP was on 12 October 1996. (Source: <http://www.constitutional.parliament.govt.nz/templates/Page.aspx?id=82>).

³⁷⁹ Website of the Clerk of the New Zealand House of Representatives: <http://www.clerk.parliament.govt.nz/Publications/Other/Booklet/2%2B-%2BLegislative%2BProcedure.htm>

³⁸⁰ Following referral to the Committee on 10 August 1993 submissions had been called for with a closing date of 30 August.

³⁸¹ NZP 1994, PD 539: 717 [Roger Sowry, Chairman of the Social Services Committee].

A key finding of this research is that the Select Committee process made a fundamental difference to shaping the legislation. In seeking a major transformation of the *Amendment Bill*, the Select Committee recommended to the House that the mandatory reporting provisions should *not* proceed and removed them from the *Amendment Bill* in their report back to the House. The Select Committee in fact further amended the *Amendment Bill* by incorporating new clauses embodying an 'alternative route'. This was a new regime which sought to supplement the existing voluntary reporting system.

The main reason that the Select Committee did not support mandatory reporting was that it believed on the evidence presented to it that New Zealand already had comparatively high levels of voluntary reporting. Further, the overseas evidence suggested that mandatory reporting tended to increase the number of reports which ultimately turned out to be unsubstantiated and, in the process, tied up resources which could otherwise be employed to help victims.³⁸² This appears to have been the key piece of research evidence that ultimately influenced a majority of Members of Parliament to reject mandatory reporting.

The proposed 'alterative route' involved the addition of legislative provisions requiring the Director-General of Social Welfare:

*to promote by education and publicity among Members of the public - including children and young persons, and Members of the professional and occupational groups - awareness of child abuse; the unacceptability of child abuse; the ways in which child abuse may be prevented; the need for reporting cases of child abuse; and the ways child abuse may be reported.*³⁸³

In addition, the Director-General was to develop and implement protocols on the reporting of child abuse for professional and occupational groups, and for Governmental and non-Governmental agencies and to monitor their effectiveness.³⁸⁴

Possibly the most remarkable aspect of the Select Committee's work is the evidence that far from being riven by political point-scoring and partisan division, the Committee achieved a genuinely bi-partisan spirit. Their unanimous Report, when

³⁸² NZP 1994, PD 539: 716-717 [Roger Sowry, Chairman of the Social Services Committee].

³⁸³ *Ibid.*

³⁸⁴ NZP 1994, PD 539:716-717 [Roger Sowry, Chairman of the Social Services Committee].

tabled in the House, was moved by the Government Chairman of the Select Committee and seconded by the Labour spokesperson. To demonstrate the striking tenor of the debate a number of examples will be given. The Chairman of the Committee stated that:

*One, I think, of the most pleasing happenings during the Select Committee was that issues were dealt with not in an emotive way – they are very easy to get wound up on – but in a way that had Members calling for reports from the relevant officials and departments, seeking to talk to a range of people, from judges to people active in the police service, and to the Department of Social Welfare social workers. Members were able to look at that and find where there was a conflict between the different agencies working with the legislation and where there are problems, and set about solving them.*³⁸⁵

The Opposition Spokesperson commented on:

*the particularly good conduct of this committee (and) in cooperative and informal atmosphere that prevailed. Together Members sought the best solution and met for quite long hours.*³⁸⁶

While a Government Member stated that he was:

*somewhat surprised that the Select Committee came to a united view on the mandatory reporting provision....The discussions in this area focus(sed) much more on the effectiveness or otherwise of the measure, or the effectiveness of alternative measures, than on politics. This is something that I would like to compliment Members of the committee on. The committee did not succumb to the temptation to be concerned about being seen to do something and despite the fact that some political pressure in our constituencies about why the committee did not recommend mandatory reporting will no doubt flow from this decision, the Members of the committee stuck to considering the effectiveness of the measure and its impact on children, more than considering the impact on their own political reputations. The question that was always in the mind of the committee Members was would it work, would it make a difference.*³⁸⁷

A Select Committee Member observed that:

*Of all the Amendment Bills I have seen examined by Select Committees, I believe in this case the committee gave a painstaking and thorough examination of the very important issues contained in the Amendment Bill.*³⁸⁸

³⁸⁵ NZP 1994, PD 539: 893 [Roger Sowry, Chairman of the Social Services Committee].

³⁸⁶ NZP 1994, PD 539: 718, [Hon.Clive Matthewson].

³⁸⁷ NZP 1994, PD 539: 720, [Amendment Bill English].

³⁸⁸ NZP 1994, PD 539: 722 [Nick Smith.].

And another commented:

*I want to say ... that it has been particularly encouraging to me to see, in an environment where often so much attention is given to the conflict and disagreement in this House, the Members of both sides coming together in a willingness and, I think, a genuine concern to do what is right and best for young people.*³⁸⁹

Another conspicuous aspect of this phase of policy formation is that a number of Select Committee Members acknowledged that they had changed their minds on mandatory reporting at the Select Committee stage when confronted by the evidence presented to them.³⁹⁰ The new Minister, Hon. Peter Gresham, confessed that he too, was in this category.³⁹¹

It is plain that research evidence placed before the Select Committee, particularly the international literature review of Hewitt and Robb (1992), was strongly influential in forming its opposition to mandatory reporting and framing its proposals about an alternative approach. In turn the Select Committee's findings were to be highly persuasive in the Second Reading of the Amendment Bill which we now consider.

Second reading

Five days after the Select Committee reported back to the House, the Second Reading debate of the *Amendment Bill* began on 29 March 1994. This debate gave Members a more wide ranging opportunity to explore the general principles of the *Amendment Bill* and to debate the Select Committee's Report. This was when the House would decide whether it wished the *Amendment Bill* to proceed.³⁹² In this instance however, procedures were not quickly concluded. Debate was adjourned after only five Members had an opportunity to speak to the *Amendment Bill*. Ultimately the Second Reading phase extended over a period of more than six months as debate did not resume until 27 September before being adjourned again until 10 November 1994, on which date it concluded.

³⁸⁹ NZP 1994, PD 539, p. 726 [Mark Burton].

³⁹⁰ See: for example, NZP 1994, PD 539: 720 [*Amendment Bill* English]; 539: 722 [Nick Smith]; 539: 725 [Katherine O'Regan].

³⁹¹ NZP 1994, PD 539: 889 [Hon. Peter Gresham, Minister of Social Welfare].

³⁹² Website of the Clerk of the New Zealand House of Representatives: <http://www.clerk.parliament.govt.nz/Publications/Other/Booklet/2%2B-%2BLegislative%2BProcedure.htm>

In the course of the Second Reading debate seventeen Members of the House spoke. Ten of these were supportive of the Select Committee's recommendation that the mandatory reporting clause should be removed from the *Amendment Bill*. While six Members spoke in favour of mandatory reporting, the remaining speaker took the line that reporting, whether mandatory or voluntary, was not the main issue and addressed himself mainly to the prevention of child abuse and proper resourcing of the Department. One speaker supportive of mandatory reporting gave notice that he would introduce an amendment to the *Amendment Bill* which would re-introduce the mandatory reporting provision in a modified and he hoped, more acceptable form.³⁹³

The influence of the select committee process

It is evident from a number of the speeches that the proceedings of the Select Committee had enabled participating Members to examine in depth many of the issues surrounding mandatory reporting. In addition to numerous speeches complimenting the Select Committee on the objectivity of its report, a number of Members made reference to the complexity of the issue in which significant arguments existed on both sides of the case, and to the division of opinions among respected professional and Parliamentary colleagues.³⁹⁴ Frequently mentioned was the weight of the comparative evidence in favour of voluntary rather than mandatory reporting and the significance of New Zealand's already high rate of reporting under a voluntary scheme.³⁹⁵

It does not seem unreasonable to conclude that at least some of the comparative data employed in this way was drawn from Departmental papers made available to Select Committee Members³⁹⁶ and the Literature Review³⁹⁷ given at the outset to all Parliamentarians and other briefing material subsequently received. This suggests the influential nature of such research material and the effectiveness of the Government's strategy of making Members generally, informed about the issues surrounding mandatory reporting.

³⁹³ NZP 1993, PD 543: 3765.

³⁹⁴ NZP 1994, PD 539: 886 and 889 [Hon. Peter Gresham, Minister of Social Welfare], 539: 890 [Hon. Clive Matthewson], 539: 427-28 [Judy Keall].

³⁹⁵ NZP 1994, PD 539: 887 [Hon. Peter Gresham, Minister of Social Welfare], 539: 890 [Hon. Clive Matthewson]; 539: 893 [Roger Sowry]; 539: 898 [Hon. Dr Michael Cullen], 539: 899 [Nick Smith].

³⁹⁶ Select committee Members had received considerably more information from the department than the literature review which was circulated to all Members of Parliament in the week prior to the introduction of the *Amendment Bill*.

³⁹⁷ Hewitt and Robb (1992).

Several speakers referred to the amount of lobbying they had received and its influence upon their views. Others made direct, but frequently selective, reference to the significance of submissions made to the Select Committee not only in relation to the notable division of opinion between well-respected community groups whose views inevitably needed to be given weight, but also in regard to various aspects of the content of submissions.³⁹⁸

It is significant that this extended debate took place at a time and in a context when several high profile child abuse cases had occurred and when child protection issues in general and the immense operational pressures facing the Children, Young Persons and Their Families Service were prominent features of news media discussion and of public concern.³⁹⁹ Nevertheless, it is worth observing that in contrast to the Northern Territory situation and despite the context of heightened media attention and public concern about child abuse current at the time, this does not appear to have determined many Members' attitudes. Reference to these matters was made by some Members arguing in support of mandatory reporting in sometimes quite emotive terms. Many other speakers, however, remained focused on the question as to whether the introduction of mandatory reporting would be a demonstrably more effective means of protecting greater numbers of children from abuse. The issue of effectiveness, over merely being 'seen to be doing something', was highlighted by the Opposition spokesperson when explaining how the Select Committee came to its decision to remove mandatory reporting from the *Amendment Bill*:

In the end, it seemed to me that there was a more important question to answer than the question 'Are you in favour of mandatory reporting, or not?'. The more important question was 'What is the best way through the legal process ... to minimise child abuse in our community?'. It seemed to me we were presenting ourselves with a false question ... (and) needed to widen the way that we thought, to start again from the beginning, and to say that if we are presented with

³⁹⁸ NZP 1994, PD 543: 3761 [Trevor Mallard]; 543: 3766 [Richard Northey]; 544: 4712 [Warren Kyd]; 544: 4716 [Ian Revell]; 544: 4733 [Dianne Yates].

³⁹⁹ See for example, NZP 1994, PD 539: 892 [Hon. Clive Matthewson]; 539: 896 [Hon. Dr Michael Cullen]; 539: 900 [Nick Smith]; Welch, Dennis, 'Craig Manakau: Nowhere to run', *NZ Listener*, January 15, (1994:17-23) which covers the tragic death from abuse by his step-father of ten year-old Craig Manakau in November 1992. On the condition of the Children Young Person's and Their Families Service see, for example, Fulcher, Leon and Ainsworth (1994); Cheyne, Christine, O'Brien Mike, and Belgrave, Michael (2000:201), as well the criticisms of the Service made in the Mason Report.

*the present situation, what would be the best way to deal with this problem in the law.*⁴⁰⁰

A number of other Members, all of them opposed to mandatory Reporting framed the question in similar fashion.

A new strategic approach

The Select Committee's alternative proposal to place a considerable new duty on the Director-General of Social Welfare to provide both community and professional education programmes, and to set-up formal inter-agency protocols for managing child abuse whilst retaining voluntary reporting, could be seen as a strategic approach designed to secure support for its dislike of mandatory reporting.⁴⁰¹ Much is made in the Parliamentary record of the fact that this alternative approach was thought-up by the Opposition spokesperson on Social Welfare:

When we started thinking about it in that way, and realizing that the present situation does not seem good enough and that mandatory reporting might not be so effective, when we focused on whether there might be a more effective response, I believe that led the Select Committee to the recommendation it has made to the House. I made the suggestion to the Select Committee – what is in the Amendment Bill is my suggestion. When I thought about it, it seemed to me that what we are trying to do is to increase awareness of the problem, to increase the knowledge that dealing with children in an abusive way is utterly unacceptable, and to increase the feeling of duty to report when people see evidence of child abuse, which of course is what mandatory reporting intends to do....

*In the end, it seemed to be a good idea to go to it directly to try to raise awareness about the issues and about the desirability of reporting, try to make sure there are consistent ways of dealing with reporting, and generally try to make a more effective response without making it a compulsory response. That was the genesis of the suggestion made by the Select Committee and what is formally in the reported-back copy of the Amendment Bill.*⁴⁰²

Curiously however, *precisely* this suggested alternative approach to mandatory reporting *expressed in exactly the same terms*, had figured in the Social Policy Agency advisors' report to the Minister of Social Welfare dated October 5, 1992.⁴⁰³ Whether this was genuinely coincidental or whether the formulation had somehow

⁴⁰⁰ NZP 1994, PD 539: 890 [Hon. Clive Matthewson].

⁴⁰¹ Eventually embodied in law as s.7(2) ba of the Children, Young Persons, and Their Families Act 1989 (as amended).

⁴⁰² NZP 1994, PD 539, 890-891 [Hon. Clive Matthewson].

⁴⁰³ Report to the Minister of Social Welfare, Mandatory Reporting, 5 October 1992, SPA File Number SS /300/20 Part 3, Folio34. 34.

been floating about the corridors of power or whether there were some other means of transmission is not possible to ascertain from the documentary record. Interestingly, similar proposals for professional and community education had been outlined in the Minister's First Reading speech:

*In the New Zealand context it can be argued that public education campaigns, better training of professionals and others involved in the area, and competent and efficient care and protection services are just as important. I believe that all the above are needed, irrespective of whether one has a mandatory reporting clause covering child abuse.*⁴⁰⁴

However, no objection was lodged to the perhaps somewhat self-congratulatory line taken by the Opposition Spokesperson. And certainly not by the former Minister, Hon. Jenny Shipley who, given her views, was probably relieved that an alternative she supported to the imposition of mandatory reporting had been discerned by the Select Committee.

Very few speakers extensively listed, or systematically drew in their speeches from the range of formal arguments for or against mandatory reporting, such as those set out in their copies of the commissioned literature review and analysis of mandatory reporting.⁴⁰⁵ Most of the speakers opposed to mandatory reporting were, or had been Members of the Social Services Select Committee, or had previous close involvement with the issue. These Members tended to rely in the debate upon the Select Committee's evidence-based argument that New Zealand had high levels of reporting already, and that, on overseas evidence, mandatory reporting tended to generate unacceptably high levels of unsubstantiated cases which clogged systems and diverted resources. The former Chair of the 1987 Select Committee which had considered a much earlier proposal to insert mandatory reporting into the original *Children, Young Persons, and Their Families Act 1989*, briefly enumerated a limited number of the standard arguments for and against mandatory reporting as these had appeared in one national organization's submission to the current Select Committee.⁴⁰⁶

The pro-mandatory reporting Member who informed the House that he intended to propose an amendment to restore mandatory reporting to the *Amendment Bill* offered

⁴⁰⁴ NZP 1993, PD 537: 17306, [Hon. Jenny Shipley].

⁴⁰⁵ Hewitt and Robb (1992).

⁴⁰⁶ NZP 1994, PD 539: 4728 [Judy Keall].

an extensive list of reasons justifying his stance. It is notable, nevertheless, that most of the pro-mandatory reporting speakers simply asserted their view that mandatory reporting would assist in protecting children and was therefore necessary as part of the country's child protection system – in the words of one speaker, 'It is by mandatory reporting that something must be done'.⁴⁰⁷ Likewise, it does not appear that pro-mandatory reporting speakers took time to counter the evidence-based arguments of their opponents in the debate. For the most part they relied instead on frequently impassioned assertions of a moral or values-based position which assumed rather than argued the effectiveness of mandatory reporting in enhancing the protection of children from abuse.

With regard to the influence of politics on the process, reference has already been made to the unusually high degree of consensus and constructive examination of the issues of mandatory reporting in the Select Committee. The almost apolitical nature of the proceedings was remarked upon by numerous Members both in the reporting-back and the Second Reading debates. Nevertheless, some other Members in the Second Reading debate alluded to the pressure of lobbying they had experienced and its influence upon their view of mandatory reporting. These were invariably pro-mandatory reporting Members. Significantly, one anti-mandatory reporting Member went so far as to refer to the possible negative electoral consequences of his intention to follow the Select Committee's recommendation.⁴⁰⁸

The discussion on costs and benefits during the Second Reading debate was limited to very general considerations of the likely impact of a mandatory reporting regime on the ability of the Children and Young Persons Service to cope, should a large increase in reporting rates occur, and whether or not this was an argument against negative reporting.⁴⁰⁹ These discussions did not encompass quantitative issues and this despite the fact that considerable policy work in several departments included detailed quantitative analysis with regard to the so-called 'Fiscal-risks' to their budgets represented by mandatory reporting regime.⁴¹⁰

⁴⁰⁷ NZP 1994, PD 543: 3768 [Warren Kyd].

⁴⁰⁸ NZP 1994, PD 539: 720 [*Amendment Bill* English].

⁴⁰⁹ NZP 1994, PD 539: 893 [Roger Sowry], 539: 900 [Nick Smith], 543: 3768 [Richard Northey], 543: 4724 [Janet Mackey], 543: 4728 [Judy Keall].

⁴¹⁰ SPA, Report to Ministers of Finance Social Welfare on Fiscal Risks of Mandatory Reporting, 9 March 1994, SPA File Number SS/300/20 Part 4, Folio 51.

There was no explicit mention in the debate regarding the earlier consultations which had taken place under the auspices of the Inter-departmental Steering Group in the lead-up to the legislation – indeed it is not clear whether most Members knew of these consultations. However, reference was frequently made to the value of the consultative method represented by the inviting of both oral and written submissions to the Select Committee. It is noteworthy that the Chairman of the Social Services Committee, speaking in the debate about the significance of there being a conscience vote on the mandatory reporting issue, considered this would:

*Require those Members who have not read the submissions to go away and read them. They should also go out and talk to groups that are active, such as the Plunket Society, and to groups that are active with young children in the community. I think that is good and it will force Members to focus on this issue.*⁴¹¹

The Plunket Society was one of the groups in support of mandatory reporting. It is illustrative of the genuine atmosphere of freedom arising from a conscience vote in Parliament that here, the Select Committee Chairman, himself an opponent of mandatory reporting, was urging his fellow Members of Parliament to consider the Plunket Society view.

Committee stage – attempts to restore mandatory reporting to the *Amendment Bill* are defeated

The House considered the numerous clauses of *The Children, Young Persons and Their Families Amendment Bill* 'In Committee' on the afternoon and evening of November 29, 1994.⁴¹² This 'Committee stage' is when a Bill is considered by the House acting as if all its Members constituted a committee – the 'committee of the whole House'. This provides a further opportunity, prior to its third reading, for last-minute amendments to proposed legislation.⁴¹³ The committee stage allows a clause by clause debate on the Bill. Unfortunately for the documentary researcher, the detail of this debate is not usually recorded in Hansard, only the amendments put and the voting upon them. What is clear from Hansard in the present case, however, is that two amendments designed to reintroduce mandatory reporting into the *Amendment*

⁴¹¹ NZP 1993, PD 539: 894 [Roger Sowry].

⁴¹² NZP 1994, PD 545: 5205-5211.

⁴¹³ Website of the Clerk of the New Zealand House of Representatives: <http://www.clerk.parliament.govt.nz/Publications/Other/Booklet/2%2B-%2BLegislative%2BProcedure.htm>

Bill were proposed. Both were defeated, the first by 57 votes to 16, a majority against of 41, and the second by 53 votes to 20, a majority against of 33.⁴¹⁴

Third reading

The third and final reading of the *Amendment Bill* followed immediately. The Minister summarized the debate and seven other Members gave speeches either praising or denouncing the outcome of the previous stages depending on their positions on various issues. There seemed to be general agreement that the quality of the debate was of a high standard. Once again, the Opposition Spokesman on Social Welfare who had been so influential against mandatory reporting in the Select Committee took a leading role.⁴¹⁵ First, he said, it was a given that all Members of Parliament were against child abuse, but there had been some misunderstanding that those against mandatory reporting were against reporting *per se* despite the fact, the *Amendment Bill* was designed to encourage even higher levels of reporting. Secondly, it had not been well understood that most of the high profile cases of child abuse that reached the headlines had *already* been reported to the authorities but system failures had left a child in danger. Thirdly, he claimed that instead of making reporting mandatory and by informing and encouraging the whole population to feel a responsibility to report child abuse, a better outcome for children would result. The new responsibilities placed on the Director-General of Social Welfare would promote that outcome, he believed.

The former Minister of Social Welfare, who had commissioned the Mason Report and introduced the *Amendment Bill*, summarized the background and her part in it. She praised the House for a brave decision and revealed that when she introduced the legislation providing for mandatory reporting she did not personally support it. She had done so only in order that

*... Parliament should grapple with this issue properly, in public, and openly...I thought it was of sufficient importance – as indeed did the Government caucus- to put it in front of Parliament, to call for submissions, and let everyone have a say.*⁴¹⁶

She added that while there was no question that the whole House had a horror of child abuse, moral outrage was not a substitute for effective policy.

⁴¹⁴ NZP 1994, PD 545: 5206-5207.

⁴¹⁵ NZP 1994, PD 545: 5206-5207.

⁴¹⁶ *Ibid.*: 5215, [Hon. Jenny Shipley].

...we must not make the mistake in our vehemence and enthusiasm in trying to entrench that in law, of believing that a mandatory reporting vehicle may somehow or other make children safer. In my experience one needs to be very clear headed about whether the child being abused is more or less likely to be brought to the notice of officials if the legislation is facilitator and fosters(sic) families to be honest about their circumstances.⁴¹⁷

Other Members spoke in similar terms and were particularly in support of the new responsibilities of the Director-General of Social Welfare.⁴¹⁸

Supporters of mandatory reporting had the last word in the Third Reading Debate. The last two speakers before the *Amendment Bill* was read a third time, and so effectively became law,⁴¹⁹ maintained arguments in advance of that cause. The first expressed amazement that mandatory reporting had been removed from the *Amendment Bill*. He pointed out that mandatory reporting already existed for persons involved in motor vehicle accidents or carrying certain communicable diseases. And he asked by what moral credibility could New Zealand justify not imposing a responsibility on those who were aware of child abuse to report it to the authorities.⁴²⁰

The final speaker, who had been the mover of one of the amendments to restore mandatory reporting to the *Amendment Bill*, expressed his disappointment at the rejection of mandatory reporting although he supported the new emphasis on educating the public and professionals about abuse and abuse reporting and the setting up of interagency coordination protocols. However, he associated the principle of the 'paramountcy of the child' which had been given more prominence through the *Amendment Bill*⁴²¹ with the concept of mandatory reporting. He denied that mandatory reporting was simply a political gimmick or merely an attempt to be seen to be doing something about child abuse and described the inclusion of a mandatory reporting provision in the original *Amendment Bill* as

⁴¹⁷ NZP 1994, PD 545: 5215, [Hon. Jenny Shipley].

⁴¹⁸ NZP 1994, PD 545: 5216 [Judy Keall]; 545: 5218 [Roger McClay].

⁴¹⁹ Pending only the Royal Assent.

⁴²⁰ NZP 1994, PD 545: 5221 [Michael Laws].

⁴²¹ Refer s. 6 of the Children Young Persons and Their Families Act 1989, which was substituted by s.3 of the Children Young Persons and Their Families Amendment Act 1994 here under consideration and provided that in all matters under the Act, the welfare and interests of the child or young person should be the first and paramount consideration, having regard to the general principles (s.5) and the care and principles (s.13) of the Act. Such a provision was, arguably, absent from the original 1989 version of the Act.

... a practical means of saving children from harm in the future, to intensify the measures of paramountcy and education that are already contained in the Act, and to ensure that people were encourage to bring in other professionals to respond to this issue.⁴²²

Thus the consensus on mandatory reporting achieved in the Select Committee did not prevail in the House and argument continued to the end of the Third Reading. However, more than fifteen months after its introduction to Parliament, and some three and half years after the Mason Committee began its work, the matter had been decided: Mandatory Reporting of suspected child abuse was not to be part of New Zealand's child protection law.

Conclusion

The analytical questions already posed concerning the Parliamentary debate can now be answered in the New Zealand context. On the question whether the record of Parliamentary debate gives an account of the policy development process culminating in the *Amendment Bill*, it can be seen that, internally, the Parliamentary record provided only the barest outline of the development of the policy before it reached the House. Certainly it is true that one piece of research from that earlier policy formation process, the international literature review and analysis of mandatory reporting⁴²³ was available at the outset to all Parliamentarians and was frequently commented upon and utilized in argument. However, much of the rest of the earlier policy work was effectively invisible in the Parliamentary process. The political *policy-making* process had taken over from the *policy-formation* process. This distinction points to the fact that whilst advisors and policy specialists may develop policy ideas and influence policy proposals, whether these are in fact made into policy *per se*, actually depends upon decision-making capacity or power which is usually in the hands of politicians (ultimately the Cabinet) or their delegates.

It appears therefore that the Parliamentary record tends to conceal, or certainly not reveal, much of what is known from elsewhere (e.g. Departmental files, Ministerial briefing papers), about the development of the policy eventually expressed in the *Amendment Bill*. Much of the background research and briefing material was not available to ordinary Members of Parliament. In one notable and ironic instance a

⁴²² NZP 1994, PD 545: 5223 [Richard Northey].

⁴²³ Hewitt and Robb (1992).

Parliamentarian took personal credit for pivotal ideas that had been developed in the earlier policy formation phase.

This analysis suggests, as in the Northern Territory example, that from a reading of the mere text of the Parliamentary record the reader would gain relatively little insight into the process of policy formation in general, or of the range of information and advice available to the Minister on matters of context, competing arguments and issues, costs and benefits, evidence adduced, advice received, consultations made and the degree of community support or Opposition to the measure. It is suggested that reasons for this disparity between the 'reality' of the policy making process inside Parliament⁴²⁴ and the prior policy development process outside of the law-making body⁴²⁵ is due to a combination of two factors : political considerations and the practical exigencies of Parliamentary decision-making. Ministers, as we have seen in both jurisdictions, preferred to appear in control of the entire process and to sequester much information. Further, limited Parliamentary time necessarily compressed discussion and debate.

Finally, regarding whether the process in the House of Representatives marked a continuation of the development of the policy or merely 'rubber stamped' something already formed, it has been shown that, in the New Zealand case, the impact of the process inside Parliament was, in fact, considerable. It has been stressed already that a key finding of this research is that the Select Committee process made a fundamental difference to shaping the New Zealand legislation, as had been the Government's intention. The Select Committee turned down the proposal for mandatory reporting. In a free vote⁴²⁶, its recommendation was followed in the Parliament, despite more than one formal attempt in the to further amend the *Amendment Bill* to reinstate mandatory reporting provisions.

It is clear, however, that despite the unanimity eventually reached by the Select Committee, politics and the political management of the process was a key feature. The Minister was determined from the outset to manage the political process closely, and much of the research material from the policy formation phase prior to the

⁴²⁴ As reflected in the formal record of the legislative process.

⁴²⁵ As recorded however incompletely in the records of that process held on departmental files.

⁴²⁶ That is one not constrained by Party discipline but where Members are free to vote according to conscience.

introduction of the *Amendment Bill* was kept 'under wraps' for long periods or not revealed at all. For example, it was proposed by the Department that all Members of the House of Representatives should, in the week prior to the introduction of the *Amendment Bill*, receive in addition to the international literature review, an edited version of the Social Policy Agency's final report incorporating the views of the Inter-departmental Steering Group. This was countermanded by the Minister for reasons that are not discernible in the documents perused.⁴²⁷

Notwithstanding the commendable degree of impartiality achieved in the Select Committee, pragmatic considerations and the competing agendas and pressures of Parliamentary life also clearly played a part. They moved the debate away from the Inter-departmental Steering Group's less hurried and more purely dispassionate, quasi-academic policy analysis and evaluation of issues and possible solutions, towards finding something that would 'work' politically by addressing public disquiet about child abuse and would portray politicians as taking effective action against it.

⁴²⁷

SPA File Number SS /300/18 Part 3 Folios 40 and 44. It appears that many months later, at the start of the Second Reading of the *Amendment Bill* the associate Minister of Social Welfare arranged for additional material to be circulated to all Members of Parliament. This included a further copy of the Literature Review and Analysis of Mandatory Reporting, a discussion paper on mandatory reporting which was presumably that originally prepared for use in consultations and forums in 1992 by the Social Policy Agency, and a discussion paper on education strategies and reporting protocols as an alternative to mandatory reporting, in all probability the same paper that was prepared on these topics at the request of the Select Committee during their deliberations on the *Amendment Bill*. See: Report to Associate Minister of Social Welfare, Letter to M.P.'s forwarding information on Mandatory Reporting, SPA File Number SS94/2337.

CHAPTER TEN

COMPARISONS AND CONCLUSIONS

INTRODUCTION

This chapter aims to draw conclusions from the evidence which has been presented in preceding chapters. In comparing and contrasting the policy processes and eventual outcomes in the Northern Territory and New Zealand it is important to bear in mind the research questions which have been central to this study. These were:

- (i) *What processes and considerations led each of the Governments involved to adopt its final position on mandatory reporting as embodied in legislation?*
- (ii) *What research was undertaken and advice given in each jurisdiction to inform the final political debate on mandatory reporting and how far did it influence the outcome?*
- (iii) *To what extent were the respective legislative debates decisive in determining the policy outcomes and how far did they reveal the underlying policy-formation processes?*
- (iv) *How might the eventual adoption of different policy approaches in the two jurisdictions be explained?*

In this chapter findings reached already in respect of the first three research questions will be summarized and the conclusions of the study in respect of research question four stated.

The presentations of documentary evidence given in earlier chapters have shown historically how it came about that the Northern Territory adopted mandatory reporting and New Zealand rejected that policy option. To the extent that these chapters have provided detailed evidence concerning the substantive processes and considerations which led each Government to adopt its final legislative position on mandatory reporting, it has been possible to address the first key research question of this study.

Similarly, accounts have been presented of advice given to the respective Governments and of any research undertaken to inform the political debate on mandatory reporting. This material has addressed the first part of the second research question. With regard to the *influence* of such advice and research, however, we have seen that the story was different in each of our jurisdictions where

distinct approaches to research and information gathering were evident, and where its influence correspondingly varied.

In the New Zealand case, an extensive Research Project was commissioned by the Government. Its elements included the gathering of relevant information including conducting a review of the international scientific literature on mandatory reporting, engaging in public consultation, and gauging professional opinion to explore the ramifications of the proposal and test its validity. As we have seen research evidence was critically influential. The main reason that the Select Committee and later Parliament did not support mandatory reporting was that it believed, on the evidence presented to it, that New Zealand already had comparatively high levels of voluntary reporting. The key piece of research evidence that ultimately influenced a majority of Members of Parliament to reject mandatory reporting was overseas evidence suggesting that mandatory reporting tended to increase the number of reports which ultimately turned out to be unsubstantiated and, in the process, tied up resources which could otherwise be employed to help victims of abuse.⁴²⁸

No such research exercise was undertaken in the Northern Territory. There, Departmental advice was certainly called for, and some of the advice given to Ministers incorporated research findings known to Officials, but there does not appear to have been any comprehensive effort to gather research material, or to distribute it, in order to inform the legislative process. Much reliance was initially placed on Reports of the Australian Law Reform Commission but these simply offered summary arguments for and against mandatory reporting as distinct from research evidence about the effectiveness of the policy.⁴²⁹ At the same time, it must be admitted that in the early 1980s there was far less research literature available on the topic of mandatory reporting than was later available to the New Zealand authorities a decade later. Nevertheless, relevant research material did exist but, as we have seen, was not systematically utilized in the Northern Territory policy process.

With regard to the third research question, it has also been possible to reach conclusions on how decisive the respective legislative debates were in determining

⁴²⁸ NZP 1994, PD 539: 716-717 [Roger Sowry, Chairman of the Social Services Committee].

⁴²⁹ Seymour, John (1982: 3-9).

final policy outcomes. It has been established that in the Northern Territory, the originally tabled proposal to introduce mandatory reporting underwent no significant change in the Legislative Assembly. By contrast, in New Zealand the Parliamentary process was shown to be determinative. This was a key finding: the New Zealand Select Committee process made a fundamental difference to shaping the legislation. It promoted a major transformation of the Amendment Bill, recommending to the House that the mandatory reporting provisions should not proceed. The Select Committee further amended the Amendment Bill by incorporating new clauses embodying an 'alternative route', a new regime designed to supplement the existing voluntary reporting system.

Addressing the second part of question three, earlier chapters also examined how fully the official record of the respective legislative debates revealed the underlying policy-formation processes reflected in the wider documentary record. In both the New Zealand and Northern Territory cases it was concluded that in the Parliamentary Debates far more remained concealed than was revealed. Even the most careful reading of the Hansard would not disclose many of the realities of the policy-formation process, its twists, turns and reversals and the political influences that were at play, although the New Zealand Parliamentary Debates were somewhat more revelatory. This was due especially to the existence of a Select Committee process there, and also to the New Zealand Government's evident readiness to be guided by the recommendations of the Select Committee. Also significant in ensuring the Parliamentary policy-making process was more informed by earlier policy-formation work was the willingness of the Minister to have the issue openly debated and to provide all Members of Parliament with a copy of a major piece of Departmentally commissioned background research, the *Literature Review and Analysis of Mandatory Reporting* report prepared for the Social Policy Agency of the Department of Social Welfare.⁴³⁰

The remaining research question to be addressed through a comparison of the policy-making processes in the two jurisdictions under study was how the eventual adoption of the different policy approaches in the two jurisdictions might be explained? This is the central historical question at the heart of this study and

⁴³⁰ Hewitt and Robb (1992).

specifically moves our attention from questions about the 'how' of the policy process to the 'why' of decision-making.

Explaining differential policy outcomes through comparative analysis

The determining impact in the Northern Territory of a particular child death and the difference in time-scale is probably the most immediately noticeable contrast between the policy processes in the two jurisdictions. We have seen how in the 1980s in the Northern Territory of Australia political and public reaction to the tragic death of Dean Long precipitated the introduction of mandatory reporting as an 'emergency measure' through an urgent amendment to the existing child protection law, well in advance of a planned major review of the Northern Territory's child welfare law. This process took a mere three months to be completed.

In the 1990s in New Zealand, on the other hand, the move to place mandatory reporting back onto the political agenda came as the result of a Ministerial Review of a major piece of relatively new legislation. The ensuing policy process took more than two years to complete and resulted in the rejection by the Parliament of the proposal to introduce mandatory reporting. That is not to say that highly-publicized child deaths from abuse did not also occur in New Zealand during the period under study. As has been shown, such child deaths did occur in New Zealand during this period and they influenced the Ministerial Review led by Judge Ken Mason to recommend the introduction of mandatory reporting there.⁴³¹ But in contrast to the Northern Territory case, in New Zealand reaction to such deaths was not determinative of the policy outcome.

Another significant area of difference between the two case studies is the context and the character of the Parliamentary debates on the issue. In the Northern Territory context, the measure was introduced by a new Minister in total support of the policy and uncritical of its assumptions, who appeared to consider that it was self-justifying, and who was determined to use his Government's majority to enact it. By contrast, in New Zealand, the Minister did not necessarily support the proposal for mandatory reporting. Indeed, evidence was found that the Government itself was split on the

⁴³¹ See for example See: Max, Lesley. 'The Killing of Delcelia Witika and the Banality of Evil'. *Metro*, 131, May 1992, 66-77; Max, Lesley, 'The Killing of Delcelia Witaka: the lessons', *Metro*, June (1992: 132; 108-114); McLoughlin, David. 'The Canonisation of Tania Witaka', *North and South*, November (1998: 152; 32-41).

issue. What the Government did support, however, was the notion that mandatory reporting should be thoroughly debated and that the decision whether or not to adopt mandatory reporting should rest upon the evidence produced to the Select Committee. Furthermore, this stance persisted, despite a change of Ministers of Social Welfare, between the Introduction of the *Amendment Bill* and its eventual passage into law some two years later.

The character of Parliamentary scrutiny and debate was far more cursory in the Northern Territory, whereas in New Zealand the issue of mandatory reporting received far more intensive and critical examination and the debates appeared to be far more nuanced and well-informed. This more engaged, critical and open-minded stance on the part of many New Zealand Members of Parliament may also have been influenced by the fact that many of them were already familiar with the issue of mandatory reporting from the earlier debates surrounding the introduction of the Bill that became *The Children, Young Persons and Their Families Act 1989*.

This points to another significant difference between the processes followed in the two jurisdictions: the lack of a Select Committee process to examine the issue in the Northern Territory Legislative Assembly compared with the influential role played by the Select Committee in the case of New Zealand. In the Northern Territory the proposal for mandatory reporting lay on the table of the Legislative Assembly for a period of less than three months between its Introduction and the substantive Second Reading Debate. No formal Parliamentary scrutiny was given to it between Readings nor were any submissions on the legislation invited from the community.

By contrast, as already noted, the New Zealand Select Committee established to consider the Children Young Persons and Their Families Amendment Bill 1992, made a decisive difference to Parliament's consideration of the issue of mandatory reporting. It received many submissions, considered a large amount of evidence, significantly altered the Amendment Bill and reported unanimously against the proposal that mandatory reporting be introduced. And as observed, in this process many Select Committee Members' earlier views supporting mandatory reporting were reversed through their consideration of the evidence put before them.

It is useful also to take note of the contrast between the unanimity of Parliamentary opinion in the Northern Territory compared with the division of opinion in the New Zealand Parliament. The Northern Territory Legislative Assembly Debates themselves may not unfairly be described as somewhat 'lacklustre' with no serious questioning of the proposed policy and no significant disagreement apparent between Members. The outcome seemed a foregone conclusion. Quite differently, in the New Zealand Parliament the issue was fiercely contested in debate with votes being taken on motions to reinstate mandatory reporting after it had been removed from the Amendment Bill, and with opposing views on the issue remaining to the end. This notwithstanding the fact that on mandatory reporting the Select Committee itself, having studied the evidence, had achieved a striking and rare degree of bipartisan unanimity against the policy.

Mention has already been made of the differential use made of available and commissioned research and its influence upon the final outcome in each jurisdiction. In the Northern Territory's case it has been shown that research findings and advice were not at all influential in the final policy outcome. As we saw in Chapter five, in a serious breach of procedure, the formal advice justifying the measure to Cabinet came *after* the Amendment Bill had been introduced to the Legislative Assembly. Furthermore, no research effort was mounted, and the Department of Community Development was ultimately forced to tailor its advice to accord with the Minister's will. This was despite the fact that the Department had strongly opposed mandatory reporting on a number of reasonable grounds, including the very significant principle, highlighted by much subsequent research literature but well understood by Officials at the time, that mandatory reporting was likely to clog the child protection system beyond its resources with large numbers of inappropriate notifications. The Department had even made strong representations to the Minister, on the eve of the introduction of the Amendment Bill to the Legislative Assembly, that it was misconceived. However, these views were given short shrift by the Minister.

What then was the position in New Zealand? At first glance it might be thought that a similar assessment might apply when it is remembered that in late-1992 the work of the inter-Departmental Project Team was cut short by a political decision to proceed with a Amendment Bill incorporating a proposal for mandatory reporting. Did this not mean that the research effort was politically undermined and thereby made

ineffectual? To the contrary, evidence given in Chapter nine showed that although the work of the Project Team was indeed overtaken by political events, its impact was not lost. There continued to be a close working relationship with the responsible Minister and sufficient of the Project Team's completed work was permitted to be circulated that it had significant influence in the final outcome, particularly upon the Select Committee, but later also on other Members of Parliament as well. Of particular significance in this regard was the international literature review of Hewitt and Robb (1992). Perhaps if such an analytical study had been commissioned and made available to Northern Territory Legislative Assembly members the character of their debate would have been more critical.

Another difference that applied in the Northern Territory, which unlike New Zealand is a Territory within a larger Federally-based polity, was the pressure of the example of other Australian States practicing mandatory reporting. The documentary record shows that on several occasions during the Northern Territory Departmental policy-formation process, and in the Legislative Assembly Debates themselves, mention was made of the part played by mandatory reporting in a number of the Australian States. This points to a political-cultural factor operative in that jurisdiction not present in New Zealand. Resisting the force of such examples would perhaps have required more detailed independent analysis and the political will to not necessarily follow the trend of other States, features which did not appear to be present in the Northern Territory's mandatory reporting debate.

Proceeding in the face of evidence

The evidence quoted in Chapter two of this study makes clear that policy of mandatory reporting appears to be neither efficient nor effective. For example, it was shown that it draws large numbers of families into the child protection system for investigation and very frequently the reports cannot be substantiated. Furthermore, it reduces the resources available for treatment and follow-up of high-risk cases and confirmed cases of serious abuse by diverting the focus of child welfare services to the forensic investigative processes at the expense prevention and treatment.⁴³² Evidence is lacking that mandatory reporting prevents child injuries and deaths or reduces their incidence. It is therefore not shown to be effective. In fact it appears to make the situation worse by clogging child protection systems with case numbers

⁴³² Harries and Clare et al. (2002); Carter (1988); Scott (1995).

that outstrip resources. Thus mandatory reporting tends to worsen the situation of individuals and limit the ability of the child protection system itself to cope. On this evidence it would appear that mandatory reporting cannot be considered efficient.

In the face of such evidence-based conclusions from numerous studies how might it be possible to explain the adoption by legislators of mandatory reporting regimes, as was done in the Northern Territory? In approaching this question it is important to repeat the point already made in Chapter one that policy-making is not always a straightforward process of technical analysis of problems and the disinterested application of effective solutions. The social and political context frequently prevents this.

Two scenarios, or some combination of them, may be at work. First, either the evidence was not available or was simply ignored and the assumptions implicit in mandatory reporting allowed to remain unexamined and to carry the day. Secondly, available evidence was simply regarded as irrelevant because some 'higher good' was considered to be involved.

In this second scenario, an overriding imperative operates which is considered to make evidence about the ineffectiveness and inefficiency of mandatory reporting irrelevant. It may reflect the adoption of a moral position granting the symbolic value of mandatory reporting privileged or paramount status. In other words, the issues which, on any rational reckoning, need to be addressed by legislators considering the mandatory reporting option are ignored. The operational deficiencies of mandatory reporting are overlooked because policy-makers consider that it makes a vitally significant statement by society that child abuse is so abhorrent that certain person's should have a pre-eminent legal duty to report to the authorities whenever they have suspicions that abuse has occurred. That is why the literature shows there is an irreducible moral or values base to the policy debate on mandatory reporting. For some partisans in the debate, arguments based on symbolism will outweigh considerations such as effectiveness or efficiency.

A Comparative Conclusion

Why then did the Northern Territory adopt mandatory reporting and New Zealand reject it? On the basis of the evidence gathered, the conclusion of this study, in

summary, is that the politicians in the Northern Territory assumed mandatory reporting to be an effective policy to reduce child abuse and determined that it should be implemented whereas New Zealand politicians investigated the matter and concluded that mandatory reporting was not the most effective available strategy.

It is concluded that the Northern Territory adopted mandatory reporting in 1982 because the Government, under pressure from public opinion and from the political need to be seen to be doing something effective about child abuse following a highly publicized child death, assumed without full inquiry or consultation that mandatory reporting was such an effective measure. In this decision they were supported by a lack of critical argument from their political opponents, overrode Departmental advice, and were strongly influenced by the fact that the policy had already been implemented by a majority of the Australian States.

On the other hand, it is concluded that New Zealand rejected mandatory reporting because the Government of the day, although itself split on the matter, permitted the policy issues to be fully debated in Parliament, and provided for the examination of submissions and evidence by a Select Committee. The Government also facilitated professional research and consultation on mandatory reporting and permitted a 'conscience vote' on the issue. A majority of Members of Parliament, influenced by the unanimous and bi-partisan findings of the Select Committee and its recommended alternative strategy to mandatory reporting, then voted the mandatory proposal down. The key research-based arguments against mandatory reporting in this context were that New Zealand already had a high rate of reporting under the voluntary system and that introduction of mandatory reporting would over-burden the child protection system with inappropriate reports, effectively preventing children needing help from receiving it. The findings of the International literature survey (Hewitt and Robb, 1992) were critically persuasive in this regard.

Auxiliary factors

It has been noted that 'child protection systems seem both to express and to demonstrate fundamental aspects of a country's culture and political philosophy'.⁴³³ It is therefore likely that there exist other contributory factors which augment the explanatory conclusions reached here. These are related to the political and social

⁴³³ Hetherington, Cooper, Smith and Wilford 1997:177.

conditions and the institutions of Government in the respective jurisdictions. New Zealand, the older political identity, had a stronger Select Committee tradition in its legislature. It also possibly had a more mature approach at the time, in not being propelled into a knee-jerk reaction to highly publicized child deaths, which had occurred in both jurisdictions, and in allowing a free vote on such a potentially controversial issue as mandatory reporting. The Northern Territory, smaller and very newly self-governing, perhaps had a Legislature less experienced in the handling of such issues and more likely to be led by the responsible Minister.

Lessons, reflections and recommendations

What, if any, lessons for future policy advisors lie here? This is not a purely speculative matter as the issue of mandatory reporting tends to recur.⁴³⁴ The predominant indication which appears to have been demonstrated by this study is that when acting as the final makers of policy, politicians are subject to a range of often conflicting influences, pressures and considerations. The pure message of research and advice of from Departmental Officers are but two of these inputs. We have seen in both jurisdictions how the policy-formation process quickly becomes secondary and can be overridden when political considerations dictate. Evidence-based policy advice may have more or less influence upon the final outcome depending on numerous factors outside the direct control of policy advisers and researchers. But on the other hand, the more comprehensive and well-presented the research findings the more likely they are to have sway with the ultimate decision-makers. However, this is no guarantee of any particular outcome.⁴³⁵

Therefore, it would appear that policy analysts who wish to make research-based advice more compelling to political policy-makers would be advised not only to hone their techniques of analysis but also to enhance their understanding of the dynamics of the political domain and the numerous forces which operate to heighten or diminish the likelihood of their work being received and acted upon. In this regard a promising area for future research is the topic of cost/benefit analysis of mandatory reporting. To the extent that the technical problems of such analysis described in Chapter two can be overcome and more refined techniques developed, the more

⁴³⁴ For example it re-surfaced at the political level in New Zealand in 2002 and has also recently been debated in Western Australia.

⁴³⁵ A recent example of effective, high quality policy analysis and advice on the question of mandatory reporting is Harries and Clare (2002).

likely that policy advice based on such techniques will carry weight with decision-makers.

A second learning point is that good policy advice takes time to prepare, and to be assimilated and assessed. Policy decisions made in great haste, especially when this is done in reactive response to emotive public issues, may well lack rigour and be found wanting subsequently. This is also perhaps a lesson for politicians who seek to make lasting and effective policy. Thirdly, the distinction between the functional and the rhetorical aspects of policy, needs always to be borne in mind. This study has made clear that policy outcomes cannot always be explained purely in terms of their supposed rational effectiveness or technical functionality. The symbolic and rhetorical elements of policy-making described in Chapter one are factors which must also be taken into account and may have considerable explanatory significance in particular cases, as indeed was the case in the Northern Territory.

Finally, and in terms of possible future research, it should be reiterated that this study has focussed only on the two earliest stages of the full policy cycle: initiation and formulation of policy. For a fuller picture it would also be necessary to review the outcome of the policy positions reached in each jurisdiction, in terms of their implementation, and evaluation of their impact and effect.

Reflection on the research process

At times the task of assembling, digesting and coming to understand a large body of data from archives in two countries seemed confusing and rather daunting. Often the detail obscured the larger picture. One asked whether this material could ever provide any coherent understanding of the events and processes under consideration. However, as connections were gradually made between events in the Northern Territory and New Zealand and as the comparative process unfolded, it was satisfying to identify the essential contrasts and similarities in the events under examination and to gain a deepening sense, not only of the actual process and procedures that occurred in the two jurisdictions, but of their rationale. In this way it was possible to move increasingly from the level of 'how' to the level of 'why', from description to explanatory analysis, without losing touch with the concrete feel of events vouchsafed by the narrative-historical approach to policy analysis adopted here.

Thus, it is hoped that through this study it has been possible to gain some sense, from the perspective of an observer removed in time and direct involvement from the events studied and reliant upon documentary evidence, not only of what the Northern Territory and New Zealand policy journeys on mandatory reporting might have been like, but also an understanding, at some level, of why each jurisdiction undertook its particular journey and why it arrived at its particular policy destination.

BIBLIOGRAPHY

A. BOOKS AND ARTICLES

Adams, Carolyn Teich and Winston, Catherine Teich. (1980). *Mothers at Work: Public Places in the United States, Sweden, and China*, New York: Longman.

Adler, Robert. (1995). 'To tell or not to tell: the psychiatrist and child abuse', *Australia and New Zealand Journal of Psychiatry*, June, 29(2): 190-198.

Ainsworth, F. (2002). 'Mandatory Reporting of child abuse and neglect: does it really make a difference?' *Child and Family Social Work*, 7: 57-63.

Antal, Araiane Berthoin (1987). 'Comparing notes and learning from experience', in Diekes, M., Weiler, H.N. and Antal, A.B. (Eds.). *Comparative Policy Research: Learning from experience*. Aldershot: Gower.

Australian Bureau of Statistics, (2000). *Northern Territory at a Glance*, Commonwealth of Australia.

Australian Law Reform Commission, (1981). *Report on Child Welfare, No. 18*, AGPS, Canberra.

Australian Law Reform Commission, (1981). *Discussion Paper No.12 Child Abuse and Day Care*, Canberra.

Beddoe, Liz, (1993). 'Between a rock and a hard place' in *New Zealand Social Work Review*, January, pp. 18-19.

Bell, Lorna and Tooman Patrick, (1994). 'Mandatory Reporting Laws: A Critical Overview.' *International Journal of Law and the Family*, 8: 337-356.

Besharov, D., (1985a). 'Doing Something About Child Abuse: The Need to Narrow the Grounds for State Intervention'. *Harvard Journal of Law and Public Policy*, 8: 539-589.

- Besharov, D., (1985b). 'Rights versus Rights: the dilemma of child protection', *Public Welfare*, 985, 43(2): 19-27.
- Besharov, D., (1987). 'The Future of Child Protective Services', *Public Welfare*, Winter: 5-21.
- Budai, Pamela, (1996). 'Mandatory reporting of child abuse: is it in the best interests of the child?' *Australian and New Zealand Journal of Psychiatry*, December 30(6): 794-804.
- Bulmer, Martin (ed.), (1984). *Sociological Research Methods*, 2nd edition, London: Macmillan.
- Burns, R.B., (2000). *Introduction to Research Methods*, Longman.
- Carrier, John and Kendall, Ian. 'The Development of Welfare States: The production of Plausible Accounts', in *Journal of Social Policy*, 6(3): 371-390.
- Carter, J., Burston, O., Floyd, F. and Stewart, Jan, (1988). *Mandatory Reporting and Child Abuse*. Melbourne, Australia: Brotherhood of St. Laurence.
- Castles, Francis G. and Shirley, Ian F., (1996). 'Labour and Social Policy: Gravediggers or Refurbishers of the Welfare State' in Castles, Francis G., et.al.(eds.) *The Great Experiment*.
- Cheyne, Christine, O'Brien Mike and Belgrave, Michael, (2000). *Social Policy In Aotearoa New Zealand: A Critical Introduction*, 2nd edition.
- Children, Young Persons and Their Families Act, (1989). Wellington, New Zealand: Government Printer.
- Cockburn, Gary, (1993). 'In the tradition of Old Legislation' in *New Zealand Social Work Review*, January, pp. 20-21.

- Cooper, Laureen, (1993). 'Mandatory Reporting' in *New Zealand Social Work Review*, December. pp. 29-31.
- Dane, Francis C., (1990). *Research Methods*. California: Brooks/Cole Publishing Company.
- Deutsch, Karl, (1987). 'Prologue: achievements and challenges in 2000 years of comparative research' in Diekes, M, Weiler, H.N., and Antal, A.B. (Eds.) *Comparative Policy Research: Learning from experience*, Aldershot: Gower.
- Ellwood, David T. (2003). 'From Research to Social Policy and Back Again: Translating Scholarship into Practice Through the Eyes of a Sometimes Scarred Veteran', *Social Policy Journal of New Zealand*, June 20: 6-28.
- Faller, Kathleen Coulburn, (1985). 'Unanticipated Problems in the United States Child Protection System'. *Child Abuse and Neglect*, 9: 63-69.
- Fancourt, Dr. Robin, (1993). 'Support for the Mason Report', *New Zealand Social Work Review*, January, pp. 16-17.
- Feldman, Elliott J., (1978). 'Comparative public policy: field or method?', *Comparative Politics*, January.
- Finkelhor, David and Korbin, Jan, (1988). 'Child Abuse as an International Issue' *Child Abuse and Neglect*, 12: 3-23.
- Finkelhor, David and Zellman, Gail D., (1991). 'Flexible Reporting Options for Skilled Child Abuse Professionals', *Child Abuse and Neglect*, 15: 335-341.
- Fischer, Frank, (2003). *Reframing Public Policy: Discursive Politics and Deliberative Practices*. Oxford University Press.
- Fulcher, Leon and Ainsworth, (1994). 'Child Welfare Abandoned? Ideology and the Economics of Contemporary Service Reform in New Zealand'. A paper originally presented at a conference in Auckland sponsored by the Mental

Health Foundation of New Zealand on the theme of 'Promoting Healthy Children and Young People', 1-2 August.

Gilbert, Neil (ed.), (1997). *Combatting Child Abuse: international perspectives*. New York: Oxford University Press.

Ginsberg, Norman, (1992). *Divisions of Welfare: A Critical Introduction to Comparative Social Policy*. London: Sage Publications.

Goldstein, Joseph, Solnitt, Albert J. and Freud, Anna, (1979). *Beyond the Best Interests of the Child*. New York: Free Press.

Hague Rod and Harrop, Martin, (2004). *Comparative Government and Politics: An Introduction*. 6th edition. Palgrave Macmillan.

Harries M., Clare M. et. al., (2002). *Mandatory Reporting of Child Abuse: Evidence and Options*. Report by the Discipline of Social Work and Social Policy, University of Western Australia for the Western Australian Child Protection Council, July.

Harrop, M. (ed), (1992). 'Introduction' in *Power and Policy in Liberal Democracies*, Cambridge: Cambridge University Press, pp. 1-19.

Hetherington, R., Cooper, A., Smith, P. and Wilford, G., (1997). *Protecting Children: Messages from Europe*, Dorset: Russell House Publishing.

Heidenheimer, Arnold J., Hecló, Hugh and Adams, Carolyn Teich, (1983). *Comparative Social Policy: the Politics of Social Choice in Europe and America*. London: Macmillan.

Hewitt, Adrienne and Robb, Glenda, (1992). *Literature Review and Analysis of Mandatory Reporting: A Report prepared for The Social Policy Agency, Department of Social Welfare, Wellington, New Zealand, August*.

Higgins, Joan, (1980). *States of Welfare: Comparative Analysis in Social Policy*.

Oxford: Basil Blackwell and Martin Robertson.

Holland, Grant. (1997). 'Child abuse and mandatory reporting: A review in progress'. *Children Australia*. 22(3): 35-39.

Hutchison, Elizabeth D., (1993). 'Mandatory Reporting Laws: Child Protective Case Finding Gone Awry?'. *Social Work*, January, 38(1): 56-63.

Leichter, Howard M., (1979). 'A comparative approach to policy analysis: health care in four nations', Cambridge University Press, quoted in Higgins, Joan. *States of Welfare: Comparative Analysis in Social Policy*. Oxford: Basil Blackwell and Martin Robertson.

Lindsay, Duncan, (1994). 'Mandated reporting and child abuse fatalities: requirements for a system to protect children'. *Social Work Research*, March, 18(1): 41-54.

McLoughlin, David, (1998). 'The Canonisation of Tania Witaka', *North and South*, November, 152: 32-41.

May, Tim, (1997). *Social Research: Issues, methods and process*, 2nd edition, Open University Press.

Max, Lesley, (1992). 'The Killing of Delcelia Witika and the Banality of Evil'. *Metro*, May, 131: 66-77.

Max, Lesley, (1992). 'The Killing of Delcelia Witika : the Lessons'. *Metro*, June, 132: 108-114.

Max, Lesley, (1993). Child Protection Trust Advocacy Committee, New Zealand. Submission to the Social Services Committee on the *Children, Young Persons and Their Families Amendment Bill*, Parliamentary Library, Wellington New Zealand. File No. ss/94/38-167. Submission dated 29th August.

Mendes, Philip, (1996). 'The historical and political context of mandatory reporting and its impact on child protection in Victoria'. *Australian Social Work*, December, 49(4): 25-32.

Ministerial Review Team, (1992). *Review of the Children Young Persons and their Families Act 1989*. Report of the Ministerial Review Team to the Minister of Social Welfare, February. ('The Mason Report').

Nelson, Barbara J., (1984). *Making an Issue of Child Abuse: Political Agenda Setting for Social Problems*. The University of Chicago Press.

Parsons, Wayne, (1995). *Public Policy: An Introduction to the Theory and Practice of Policy Analysis*, UK: Edward Elgar Publishing Limited.

Parton, Nigel, (1985). *The Politics of Child Abuse*. London: Macmillan.

Parton, Nigel, (1979). 'The Natural History of Child Abuse: A Study in Problem Definition'. *British Journal of Social Work*, 9(4): 431-451.

Patton, M.Q., (1990). 'Designing Qualitative Studies' in *Qualitative Evaluation and Research Methods* (2nd edition). London: Sage.

Plummer, K., (1990). 'Documents of life: an introduction to the problems and literature of a humanistic method' quoted in May, Tim. (1997). *Social Research: Issues, methods and process*, 2nd edition, Open University Press.

Ritchie, Jane and James, (1993). Submission to the Social Services Committee on the *Children, Young Persons and Their Families Amendment Bill*, Wellington New Zealand: Parliamentary Library. File No. ss/94/38-167. Received 16/9/93; Tabled 21/9/93.

Rogers, Barbara with Doron, Abraham and Jones, Michael, (1979). *The Study of Social Policy: A Comparative Approach*, London: George Allen and Unwin.

- Sarantakos, S., (1993). *Social Research*. Melbourne: Macmillan.
- Sawyer, Darwin O. and Maney, Ann, (1981). 'Legal Reform in Child Abuse Reporting: A Time Series Analysis', *Evaluation Review*, December, 5(6): 758-787.
- Sedlak, A. and Broadhurst, D., (1996). *Executive Summary Third National Incidence Study of Child Abuse and Neglect, USA*, US Department of Health and Human Services Administration for Children Administration on Children, Youth and Family Services, Annual Report 1997-1998.
- Scott, John, (1995). *A Matter of record: Documentary Sources in Social Research*, Polity Press.
- Seymour, John, (1982). 'Child Abuse and the Law: the Australian Law Reform Commission's Approach,' *Australia Child and Family Welfare*, 7(1): 3-9.
- Sussman, Alan, (1974). 'Reporting Child Abuse: A Review of the Literature'. *Family Law Quarterly*, 8: 245-313.
- Webb, E.J., Campbell, D.T., Schwarz, R.D. and Sechrest, I. (1984). 'The Use of Archival Sources in Social Research' in Bulmer, Martin (ed.). *Sociological Research Methods*, 2nd edition, London: Macmillan.
- Welch, Dennis, (1994). 'Craig Manakau: Nowhere to run', *NZ Listener*, January 15: 17-23
- Yelas, Jessica, (1994). 'Mandatory Reporting of Child Abuse and the Public/Private Distinction', *Auckland University Law Review*, 781-802.

B. Northern Territory Departmental and Coronial Reports and Files, Legislative Assembly Records, Legislation and Periodicals

The Child Welfare Amendment Bill, (1982). An Enactment of the Legislative Assembly of the Northern Territory of Australia. Darwin: Government Printing Office.

Community Welfare Act, (1983). An Enactment of the Legislative Assembly of the Northern Territory of Australia. Darwin: Government Printing Office.

Department of Community Development File, N85/0675, 'Child Welfare Act Amendments'.

Department of Community Development File, CW84/151/D, 'Community Welfare Act and Juvenile Justice Act - Implementation'.

Department of Community Development File, CN83/0066, 'Introduction of Mandatory Reporting'.

Department of Community Development File, N87/0070.

Department of Health File, 82/876 'Child Abuse Seminars and Correspondence'.

Department of Health File, F6 SWAMC- 'Mandatory Reporting of Child Abuse', H83/0918.

Department of Health File, 84/0076 'Child Abuse and Child Protection'.

Department of Health File, NR84/346, 'Child Abuse'.

Martin Committee, 'The Welfare Needs of the Northern Territory Community: A Report of a Board of Inquiry', Darwin, August 29, 1979.

Northern Territory News, August 10, 1981.

Northern Territory Coroner's Report dated 1 June 1982, Inquest in the Death of Dean Longley.

NTLA 1982, Parliamentary Record, vol. XIV, 9 March 1982- 2 September 1982.

NTLA 1983, Parliamentary Record, vol. XVI, 15 March 1983- 2 June 1983.

NTLA 1983, Parliamentary Record, vol. XVI, 23 August 1983- 20 October 1983.

Northern Territory Hansard, Questions Without Notice, 25 February 1981, 125.

Northern Territory Parliamentary Record, Questions Without Notice, 24 November 1981.

NTLA 1981, Parliamentary Record, vol. 125 Questions Without Notice, 25 February 1981, question of Mrs. O'Neil.

Northern Territory Parliamentary Record, Questions Without Notice, 24 November 1981.

Northern Territory Department of Community Development, Annual Reports 1978.

Northern Territory Department of Community Development, Annual Report, 1980-81.

Department of Community Development, Annual Report for the year ending 30 June 1982.

Department of Community Development, Annual Report for the year ending 30 June 1983, 35 and 37.

Relevant Federal Legislation

Act of the Federal Parliament of Australia (Northern Territory (Self-Government) Act (1978), Cth.

C. New Zealand Departmental Reports and Files, Parliamentary Records, and Legislation.

New Zealand Official Yearbook (1994). Wellington: Statistics New Zealand,.

Mason Committee Report (1992). Review of the Children, Young Persons and Their Families Act 1989, Report of the Ministerial Review Team to the Minister of Social Welfare Hon Jenny Shipley, February.

Children, Young Persons and Their Families Act (1989). The Government's Response to the Report of the Ministerial Review Team, 30 May 1992

New Zealand Parliament (1993). Parliamentary Debates (Hansard), vol. 537.

New Zealand Parliament (1993). Parliamentary Debates (Hansard), vol. 539.

New Zealand Parliament (1994). Parliamentary Debates (Hansard), vol. 545.

New Zealand Parliament (1993). Parliamentary Debates (Hansard), vol. 543.

Child Welfare Act, (1925).

Children and Young Persons Act, (1974).

Children, Young Persons and Their Families Act, (1989).

Electoral Act, (1993).

New Zealand Bill of Rights Act (1990).

Puao-te-ata-tu, (1986). Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, Department of Social Welfare, Wellington, New Zealand.

Social Policy Agency of the Department of Social Welfare, Report to the Minister of Social Welfare on Recommendation 2 of the Ministerial Review Team Report on The Children, Young Persons and Their Families Act 1989 - Mandatory Reporting ,Report Number SSP/1- 994/92.

Report to Minister of Social Welfare, Government's Response to the Ministerial Review Team Report on The Children,, Young Persons and Their Families Act 1989 (Mason Report), 1 May 1992, Social Policy Agency File No. SS/300/18/Part 1, SS92/3114.

Report to Minister of Social Welfare, Mandatory Reporting Literature Review, Part A, 7 September 1992, Social Policy Agency File SS/300/20 part 2. [This is the same as Hewitt and Robb (1992) supra.]

Report to the Minister of Social Welfare, Mandatory Reporting, 5 October 1992, Social Policy Agency File Number SS /300/20 Part 3.

Report to the Minister of Social Welfare on Mandatory Reporting Provisions in the CYPF Amendment *Bill*: Objections by Justice that the Provisions Breach the New Zealand *Amendment Bill of Rights Act* 1990, Social Policy Agency File No. SS/300/18/Part 4.

Report to the Minister of Social Welfare on the Progress of the *CYPF Act Amendment Bill* , Social Policy Agency File No. SS/300/18/Part 4.

Report to Associate Minister of Social Welfare, Letter to M.P.'s forwarding information on Mandatory Reporting, Social Policy Agency File Number SS94/2337.

Social Policy Agency, Report to Ministers of Finance Social Welfare on Fiscal Risks of Mandatory Reporting, 9 March 1994, Social Policy Agency File Number SS/300/20 Part4

Social Policy Agency, File No. SS/300/18/Part 1, SS92/3107.

Social Policy Agency, File No. SS/300/18/Part 1, SS92/3108.

Social Policy Agency, File No. SS/300/18/Part 3.

Social Policy Agency, File No. SS/300/18/Part 4

Social Policy Agency, File Number SS/300/20 Part 1.

Social Policy Agency, File Number SS/300/20 Part 2.

Social Policy Agency, File Number SS /300/20 Part 3.

Social Policy Agency, File ,SS/300/20 Part 4.

APPENDIX

Inconsistency with the New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 requires at Section 7 [Attorney-General's Report] that where any Bill is introduced into the House of Representatives, the Attorney-General shall bring to the attention of the House of Representatives any provision in the Bill that appears to be inconsistent with any of the rights and freedoms in the Bill of Rights. The Department of Justice was therefore required to consider the Government's proposal for mandatory report in the light of these requirements. In order to determine compliance with the New Zealand Bill of Rights Act two points required analysis: whether the mandatory obligation to report child abuse fell within the scope of 'freedom of expression' as defined in that Act and, if so, whether the proposed mandatory reporting regime could be justified under the Act as a 'reasonable limit' on that freedom.

In assessing the first issue the Attorney-General had determined that a requirement on a person to report child abuse was a matter affecting freedom of expression. The reason was that State was thereby requiring the person to make an expression (i.e. report something) when otherwise he or she would have had a choice whether or not to express himself or herself. Further, in dealing with the issue of whether there existed in this case a justifiable limit on the non-absolute freedom of expression guaranteed under the New Zealand Bill of Rights Act, the Attorney General had applied four legal tests: (i) the significance of the values underlying freedom of expression in this case; (ii) the public interest in the reporting, detection and prevention of child abuse; (iii) the limits placed on the requirement to mandatory report, and (iv) the effectiveness of the measure in safeguarding the public interest balanced against the importance of freedom of expression.

Analysis of the meaning of the term 'freedom of expression' and of the principles of public interest and how these sometimes conflicting principles might be balanced in particular cases, led the Attorney-General to the conclusion that the proposed regime for mandatory reporting could not in itself just be justified by public interest principles. This was because there was no guarantee that the objectives of the proposed mandatory reporting regime e.g. protecting children by increasing awareness, the

reporting and detection of abuse of children, and giving of symbolic expression to the seriousness with which the State views child abuse, actually met the requirements of the public interest test. The test permitted infringement of freedom of expression only to the extent that infringement was a demonstrably necessary consequence of achievement of those objectives.⁴³⁶

The Attorney-General had received advice of conflicting evidence regarding the effectiveness and consequences of mandatory reporting. For example, although mandatory reporting was seen to lead to higher rates of reporting of child abuse, it was not however possible to identify how much of the increase may have been due to voluntary reporting. Furthermore, because there was evidence that under mandatory reporting of child abuse there was likely to be an increased rate of reporting of unsubstantiated cases, considerable doubt existed as to whether mandatory reporting of child abuse guaranteed identification of a higher number of victims of abuse. In addition, it appeared that no evidence existed that mandatory reporting of child abuse *per se* would necessarily assist with effective intervention in abuse cases or prevent further injury or abuse.⁴³⁷

In late June, anticipating a negative verdict from the Attorney-General with regard to the compliance of draft Amendment Bill with the provisions of New Zealand Bill of Rights Act, the Minister of Social Welfare had agreed with advice from her department to make certain changes to the final form of the Bill to lessen the inconsistency with the Bill of Rights Act. Changes had for example included restricting mandatory reporting of abuse 'to where a child or young person has been, or is likely to be abused, *in a manner causing serious injuring or harm to a child or young person ...*'⁴³⁸ However, as there had been little room for compromise it was acknowledged these changes were probably insufficient to remove the problem.⁴³⁹

⁴³⁶ This discussion derives from the Attorney-General's report to the House of Representatives, New Zealand Parliament 1993, Parliamentary Debates (Hansard), vol. 537, pp. 17313-15.

⁴³⁷ Ibid.

⁴³⁸ Report to the Minister of Social Welfare on Outcome of discussions with Justice on the proposed mandatory reporting Provisions in the CYPF Act Amendment Bill, Social Policy Agency File No. SS/300/18/Part 4, Folio 25, emphasis in original.

⁴³⁹ Social Policy Agency File No. SS/300/18/Part 4, Folio 18.