The Eighth Winston Rickards Memorial Oration

Advocating on the Edge in Public Service: Three quarters of a Century of the Children's Court Clinic of Victoria.

Dr Patricia Brown, Director, Children's Court Clinic.

It is a privilege to deliver this oration in honour of the revered psychiatrist, Winston Rickards, who taught and inspired clinicians. During Winston's time at the Children's Hospital Psychiatry Department, professionals were primed by his example to listen to the child, be guided by the child and truly to observe in order to provide considered intervention. International visitors, friends and colleagues of Winston, of the likes of John Bowlby, enhanced the life of that very vibrant, discursive child psychiatry department, reputed at the time to be the best in the southern hemisphere. It was the hub of child work in Victoria. Winston's broad knowledge, lateral thinking on the engagement of children and understanding of their emotional world, the richness of what he imparted to others and his humanity could give rise to many anecdotes. I want to present just one brief anecdote here, merely a glimpse of patient care by Winston, before I turn to the matter of what I said I would present.

Some years ago, I had a case, court referred for assessment to the Children's Court Clinic, where a child of 7 years in a protection matter had been removed from home. Her brother, 6, was still at home. The family was impoverished. I shall not discuss many details of this very complex case, a case that is disguised here, save to say that the mother had been diagnosed with a terminal illness, medical authorities had given her 3 months to live and the children were oblivious to her dying, although knew that their mother was not well. One focus of my concern was to be able to arrange treatment for the children to prepare them for the mother's death and for the little girl, who had been away for 3 months in a state unit, to be able to have time at home with her mother. Since the mother had become manifestly ill very soon after the little girl had been removed from home, there was a danger that, in the magical thinking of a child, she could feel that she had caused Mummy's illness by her leaving.

Winston had retired by this time and I discussed the plight of this family and the emotional needs of the children with him. I wanted him to provide treatment for the children. He said he would be pleased to help the children and prepare them for what was to come. Because of the input to be given, the Children's Court then made an order that the little girl return home and Winston saw the children frequently, took them to the hospital to see Mummy, preparing them for seeing Mummy having no hair, and he continued being available to them when the mother was discharged and beyond. This he did pro bono as he was wont to do. The children gained their last experiences of their mother in as positive a way as they possibly could with the help of this compassionate and

generous man and a sense of family came to the fore. Mentioning generosity of spirit I might add to this account that willing respite was offered by the children's respective teachers. Also, with time becoming limited, Catholic Social Services made a gift to them of the only family holiday this family had ever had and when the mother then died within 2 months, the Salvation Army paid for the funeral needed, a funeral the family could not afford. It was such a very sad case but one where the goodness of others came to the fore. This cameo of Winston's input for the Court Clinic, an input that was always so readily given by him, brings me to presenting the Clinic to you. As its name suggests, the Children's Court Clinic exists specifically to assist the work of the Children's Court.

It is a clinic with a long tradition, and a précised version of its history, including changes to its model of service, may be of interest. Along the way you may see an intrinsic reward in working professionally within the Public Service- being able to provide those who in the main are amongst the most disadvantaged in our state with the best possible service- and at no cost- something that helps salve one's social conscience. You will see also the negative aspect of being a Public Servant- being silenced from public debate about the policies of Government and Government Departments, for example, being unable to debate publically the rationale adopted for the protection of children or to be able to make comment in the public domain to protect oneself or one's facility. The right of free speech accorded the man in the street, non-government agencies and private practitioners is not available to the Public Servant This latter problem, of course, exists the world over for Public Servants and I do not contest that there is reason for the rules of silence. Be that as it may, silence can be enormously frustrating and morally conflicting when you have intimate knowledge of a field from which you can derive an opinion that cannot be expressed in protest should protest seem warranted. The default position has been to give voice through one's professional body. This has included giving papers at professional conferences. However, with the sensitivities of new legislation being challenged broadly recently that also has not been allowed. More of that later.

There is indication from one source that the Children's Court Clinic was instituted in 1941, but the Public Record Office Victoria goes with 1944 and so I shall keep to that, even though there is ambiguity. The Court Clinic's inception, taken to be 1944, puts it at two years before a dedicated Department of Psychology began at the University of Melbourne in 1946. The Court Clinic is, then, at least 73 years old. Who proposed this clinic being established and in war time is not known, but it was far sighted since specialized clinics attached to a children's court are rare throughout the world to this day. There was at least one international precedent to the Melbourne Children's Court Clinic, the Judge Baker Clinic in Boston, established before it in 1917. Its existence may or may not have been known to whoever thought to found the Clinic in Melbourne. Victorian public records give few details though suggest that the Children's Court Clinic of Victoria initially existed on a small scale, with very few staff: "One psychologist, an informal administrator, a social worker and a secretary "are listed. An important source of information was my past discussion with the

now late Professor Robert Andry, a psychologist who worked as a young man at the Court Clinic in the 1940's. Since his time at the Clinic seemed fairly surely to have been from 1949-1951, however, what happened in the years between the Clinic's inception in 1944 and 1949 is not accounted for. By 1949 the administrator had gone, a nurse and a psychiatrist had been added, and that psychiatrist, Dr Brian Bailey, a man described as "knowledgeable and friendly", was in charge, and from Professor Andry's account, a medical model had been installed. He mused on Brian Bailey even having an examination couch in his room, covered each day in a fresh white sheet (perhaps symbolic of the model), "around this one gathered for case conferences when time permitted". Whether Dr Bailey was the first superintendent is not known, nor how long he was at the Clinic, since Andry remarked on there being a succession of psychiatrist superintendents at least during his time at the Clinic. Apparently no instability was felt because of the turnover as he remarked on there being good relations in the Clinic and said:" The effective leadership of the team rarely came into question, since one psychiatrist after another transferred back to one or other psychiatric hospital from which they had originally come to seek their promotion, leaving me to provide continuity and a consistently forensically-based policy."

Professor Andry himself had been employed temporarily to fill the position of the psychologist, Arthur Meadows, the Court Clinic's first psychologist, one of the clinic's four foundation members and the one person who provided most continuity for the Clinic over time until 1954. Arthur Meadows went on leave to the University of London to gain his PhD under the famous psychologist Cyril Burt, after apparently having Andry on board for overlap to introduce him to the work before he left. Andry respected Meadows's skills. I recently discovered from the Australian Dictionary of Biography (my source for suggesting that the Clinic may have already existed in 1941) that Dr Meadows had a career of unusual versatility. At least 10 of those years were spent at the Children's Court Clinic. When he was in his 30's and during his time at the Clinic, he graduated in 1949 from the University of Melbourne with first class honours and a masters degree after studying part-time; he completed his doctorate at the University of London in 1951 and stayed at the Children's Court Clinic until 1954, then taking up an academic position. In 1956 he was appointed foundation head of school when the Psychology Department was established at the University of Adelaide. So, the first psychologist at the Court Clinic began the Psychology Department at Adelaide University. I regret that I did not know of him in time to meet him. The biography article describes him as having been a schoolteacher of aboriginal children, a stipendiary probation officer, an academic at different universities- and succinctly thus: "As a teacher, clinician, researcher and consultant, Meadows worked in fields where psychology had a major impact. He showed intellectual curiosity and humanitarian concern."

The Children's Court Clinic has had some extraordinary clinicians and notable psychologists. Robert Andry, too, was renowned. He was a graduate of the pristine new School of Psychology at Melbourne University, gained his doctorate, after Meadows, at the University of London, became Professor of Psychology at the University of Montreal, and then was Honorary Professor at the

University of Hong Kong where he influenced psychology in Asia. Both Meadows and Andry were interested in delinquency because of their time at the Court Clinic where, until the early 70's, criminal cases were most in evidence. Andry described his time at the Court Clinic as "the best professional years of my life as a foundation to my future career".

I joined the Court Clinic in 1965, when the Clinic was already 21 years old and experienced how it worked then. It is striking when reading an account of how the pioneering psychologists, Bronner and Healy, had established the professional practice adopted at the Judge Baker Clinic, to compare how similar the Boston practice of 1917 was to that existing in Melbourne in 1965, almost 50 years later. This may well have reflected an international trend over years where there was superintendency of a team by psychiatry. Quoting from a pictorial flow-chart of the Centenary of the Child, provided to me by Prof Jo Grimwade of Cairnmiller, you find that the practice in the conduct of an assessment at the Judge Baker facility was as follows:" Medical staff would assess the child. Psychologist assessed the child and established educational record. Social Worker conducted intake, community liaison, and performed social assessment through home visit. Intervention was decided through long conference and enunciated by Medical Director."

At the Children's Court Clinic in Melbourne in 1965, where, incidentally, there were at that time 2 social workers, 2 psychologists, a psychiatrist superintendent, 2 consultant psychiatrists and a nursing sister, the personnel and especially the medical staff having increased, the social worker interviewed the parents to establish their social needs, including finances, the psychologist was largely employed as a mental technician, giving intelligence tests and educational tests, and the psychiatrist, after being given a brief written report by the social worker and by the psychologist (and sometimes an indication of known physical illness and height and weight measurements by the nursing sister) would see the whole family and would write the only report that was to go to the Court. Sometimes follow-up work was done by the psychiatrists and psychologists, including treatment sessions at the remedial institutions for youth.

Cross examination of the psychiatrist almost never occurred because Legal Aid did not operate in the Victorian Children's Court until April 1974 when Mr Joseph Gorman came as the Children's Court's first Legal Aid solicitor. At this time in Victoria's legal history many girls who had run away from home (often because of sexual abuse they had suffered at home that they did not disclose to authorities until long afterwards) were admitted to care as state wards after "exposed to moral danger" applications had been made to the Court. They were mainly confined to Winlaton girls' home, a closed facility run by the Human Services of the time, and with no follow-up surveillance of their situation by the Court having been scripted into law. At this time, when there was a predominance of criminal cases referred from the Children's Court to the Clinic, bicycle theft still came to attention, young women were not involved in car thefts and assaults, equal opportunity for women later allowing them a wider variety of expression of their life despair, and drugs were for flower children and the sophisticated and not for the traumatised and the disadvantaged; drug-

taking in the Children's Court population not yet featuring. When I observed children's courts in the US in 1971, I took note that drugs were mentioned in case after case and was thankful that they were not yet in evidence in Children's Court referrals at home.

Over approximately a 14 year period from 1974 changes were made to Court Clinic functioning: Post graduate courses in Clinical Psychology had at last begun on the east coast of Australia, in Sydney and Melbourne (that was in 1971), psychologists at the Court Clinic availed themselves of the new training, and soon a case was made, and agreed to, for the different disciplines at the Clinic to be able to conduct their own cases and present their findings to the court. There was nevertheless a requirement of a psychiatric team approach, the superintendent ensuring that there were team meetings related to each case, a psychiatrist leading each team and underwriting each report, although the latter underwriting requirement was resisted by the psychologists at the Court Clinic. The medical section of the Clinic had, incidentally, materially expanded, there being now a psychiatrist superintendent, two consultant psychiatrists, a medical officer, a general nurse and 2 psychiatric nurses, in addition to 2 social workers and now 3 psychologists. The predominance of medically related personnel was in accord with the Clinic then being under the Office of Psychiatric Services (formerly denoted "Mental Hygiene") within the Health Department.

Also at this time, in the early 80's, the Forensic Board, now College, of the Australian Psychological Society was formed, the Senior Psychologist of the Children's Court Clinic becoming the inaugural National Chairman of that Board. Occupying that role I approached universities in Australia, asking that there be consideration given to postgraduate courses in forensic psychology being established, and later taught in them, promoted the need for clinical psychology to underpin forensic, this being especially needed for matters involving children, and spoke for the importance of child forensic practice. Forensic work and child forensic work were coming of age in psychology in Australia, and especially in Victoria. So also were the politics that follow developments through education that invariably presage power shifts in any field, and at a variety of levels. They generally exist discreetly and professionals at least in the helping professions are rarely schooled in dealing with them.

In the early 80's there was a considerable change to Children's Court Law in Victoria after the now Emeritus Professor Terry Carney of Sydney University Law School conducted a review of the needs of the Victorian Children's Court and services. His inquiry into Child Protection proceedings in Victoria led to rights for children not contemplated up to that point in many places in the world and to cutting edge children's law in Australia for Victoria: the Child Welfare Department was for the first time made accountable to the Court for its care of children post-court, conditions were placed on court orders, contact for children with their parents was enabled in legislation and the Court had the power of surveillance over Departmental management. It is interesting that in Carney's White Paper at the time, there was also a questioning of the medical base of the

Children's Court Clinic, a clinic whose clientele had a majority of learning and social problems and fewer denoted psychiatric concerns.

Soon, the Court Clinic's quite heavy load of treatment in institutions for youth in Victoria that had had small beginnings but increased over time, together with the Clinic's more limited service to members of the public who came in off the street, asking for help with a child with behaviour problems, was taking away resources for dealing with assessment referrals from the Court, which were in fact the Clinic's raison d'être. This was also at a time when the referrals, and indeed the cross-examination of the report writers, were becoming ever more sophisticated.

The 1990's heralded considerable change for the Court Clinic, leading to the model of the Clinic that has been in place since. There is a number of factors that influenced the direction of change:

1. Carney's questioning of the medical team model that obtained at the Court Clinic.
2. The Clinic's heavy load of treatment in institutions for youth in Victoria which affected its availability to the Court.
3. The results from the Starke Sentencing Committee research: In 1988 Sir John Starke had commissioned me and the psychologist Carmen Steger to conduct research into the quality of report writing in the Victorian courts- Magistrates', County, Supreme, and Children's Courts. This was to include a researching of the disciplines preferred to do court assessments, indices of efficacy, any concerns held by judicial officers about reports and so forth. The results of one of the two researches undertaken, while in sync with those found from research done by Norman Poythress in the US, nevertheless proved controversial here, since it impinged on the delicate local power politics then existing between the disciplines; a newspaper was alerted to the results and as Public Servants, we could not respond in any way. The controversy was not about judicial officers having said in a structured interview that they wanted the input of psychiatrists and psychologists, nor about the fact that, while they certainly greatly respected the work of social workers, they had said that since each person coming to court has a social worker's report tendered, they were wanting to hear further from the other two disciplines. Those findings were from the first of two researches undertaken. The controversy came from the findings from the second research, a blind rating by the judicial officers, that is, a rating, with the discipline of the writer being unknown, of reports of social workers, psychiatrists and psychologists in terms of indices of efficacy suggested by respondents in the first research: the second research showed that in adult courts the reports by psychologists and social workers were rated equally as most efficacious, with psychiatric reports getting a somewhat lower rating and in Children's Court the reports of psychologists were rated highly as the most efficacious, then came social worker reports then psychiatrists reports. It was however

pointed out in the research that all the reports rated were of an acceptable level. When these results had been found earlier in US research, there had been no attempt to kill the messenger; the results spurred the different disciplines in the US on to increased training. Given time, of course, increased training has occurred in Victoria for all the disciplines presenting to the Court, and the political tensions of that time between the disciplines have all but fallen away.

4. A fourth influence for change was a ruling by Justice Frank Vincent of the Victorian Supreme Court. In 1991, Justice Vincent, in an unreported case, heard evidence that had been derived from a clinical team approach. He was not prepared to accept the evidence on the basis that he would not be able to establish whose opinion he was actually hearing or how it had been derived. On hearing this, I approached Professor Martin Kaplan, a US expert in Organizational Psychology who was on sabbatical at Melbourne University, and sought his opinion about what research would suggest about an opinion given to a court on the basis of a team approach. His response was that research over some decades readily supplied an answer: the opinion given would be confounded, and would likely be that of the person or persons in the team who had the highest status or the best language skill, rather than being necessarily that of the person with the best knowledge of the case.

In 1992 the Children's Court Clinic changed dramatically, at the instigation of Dr Peter Eisen, the Chief Psychiatrist of the Office of Psychiatric Services. The Clinic was divided into two distinct clinics. A psychologist was, for the first time, to head the section of the old Clinic devoted to Court work, which had been historically the work of the Clinic, and this was to continue to be deemed the Children's Court Clinic. I was appointed to the position. The other clinic, called Youth Bridge, was to be devoted to treatment and especially for incarcerated youths and to be run by a psychiatrist. Dr Heather Manning was appointed there. The latter clinic, very unfortunately for those in remedial institutions, closed at the end of that year.

I had only been given three Public Service positions including my own for the reconstituted Children's Court Clinic, and the money for a psychiatrist's position. It was not sufficient to run a state-wide service, so I used the money for one position and the money for the psychiatrist, to begin, for the first time, to secure the services of clinicians sessionally, on request, and well-disposed persons in finance in the Health Department slowly increased money to cover the amount needed for the referrals.

The Children's Court Clinic thereafter steadily developed as a specialist psychology clinic with a majority of clinical/forensic psychologists full-time, and psychiatrists and specialist psychologists including neuropsychologists working sessionally on a case-by-case basis. The Clinic was run on an independent practitioner model, but with oversight of each case by the Director, who vetted each report, and acted as Devil's Advocate where needed, pointing out any vulnerability in the report. Each Court Clinic clinician, full-time or sessional, presented for

cross examination in court when required. There is thus a satisfying transparency about the work not readily available outside a court setting.

One of the first tasks for the Clinic in 1992 was to establish how long it took to produce a creditable court report in protection and criminal matters as there was no research on this in the 1990's. I did not publish this research at the time (it was mentioned later in a publication) but we did find that it took 31 hours to undertake an assessment and produce a report in a protection matter and 15 hours for a criminal report. The time relating to protection cases includes the reading of antecedents, formal clinical observation, interviewing, test giving, telephoning for collateral information and report writing. Subsequent research in the US has suggested 29 hours for a Family Court matter, so our research findings are quite similar.

A collegiality developed in the facility which was enlivened by the constant interchanges with different clinicians, and with the legal profession. So too the work of helping children and families, by clinicians giving the most professional appraisal of their situation they could at a time of family crisis, was not only rewarding of itself - clinicians could see that their work could potentially help alter the life course of a child for the better- but the work was inherently interesting and varied. Clinicians were consequently able to continue on in the work, irrespective of the sadness often encountered. The clinicians, skilled in their social science, also learned the art of making children and their family members come alive in characterological pen-pictures so that their stories and characteristics leapt from the pages of their reports to help the legal decision maker. The clinicians acquired expert knowledge in disadvantage and they were able to promote kindness in the system.

A professional once suggested to me that kindness was not forensically sound, but she was equating kindness with partiality. I want to address the issue of kindness in reporting as it is crucial for the Children's Court Clinic, where much is at stake for the children. "Kind" in Court report writing as I see it, does not refer to a misplaced Pollyanna approach, but conveys the Oxford Dictionary sense of "not harmful to"; it is the holding and conveying of respect for the person, an ability to empathise with feelings that then makes the clinician particularly sensitive to the words he or she writes, sensitive that no pejorative word creeps in unnoticed and multiplies, causing the fabric of the report to begin to have a pejorative tinge. After all, words can become bullets when extreme care is not taken with every single word of a report, every innuendo and shade of meaning. Kind writing provides balance; it is saying what is positive and resilient in the make-up and situation of a person, as well as clearly stating what has gone awry, without the embroidery of subtly tart, judgmental, clipped words about people and families. Depending on the circumstances, it can be be the difference between" the mother was not able to attend" and" the mother failed to attend".

Lack of kindness in writing often results from prejudgment or else from a culture in an agency. Just consider: before forensic clinicians begin their work they are confronted in juvenile criminal

matters with police briefs and summaries of charges concerning sometimes serious injuries to people from violent behaviour by youths, at times including photographs of victims taken for evidence, and they read graphic details of cruelty to animals. In protection matters, they see from the Child Welfare in the making of their case, a centring, and often exclusive focus on negative reports about family members that increases the spectre of seemingly intractable child abuse before the clinician begins, child abuse being an extremely emotive issue in its own right. The dice is stacked to blaming. However, forensic clinicians are to make clinical/forensic assessments that are objective, not moral or emotive judgments, in their quest to help the decision maker, and, indeed, in putting the child first. The plea of a number of judges in the course of research into report writing was for kindness and balance. In a sense, the reports of forensic clinicians can become ersatz personality tests of themselves, and judges and magistrates look for what kind of personality wrote what they are reading, to see whether they will give the report credence. Did the report writer dislike the defendant? Unfortunately, all too often people who come to the Court Clinic perceive themselves as having in the past been castigated, disrespected and judged, overtly or otherwise, sometimes by persons from official agencies, and in the way information has been conveyed in reports, which closes them to considering change where change is really needed. It is one work of the Court Clinic, then, to open persons referred for assessment to new thinking on what has brought them to the Court. If this is successful, more confidence can be had by the Court in change being possible.

An account of three quarters of a century of the Children's Court Clinic needs to tell you about its functioning now in 2017, before I turn finally to the politics I am able to broach because they are on public record. In 2017 there are 50 clinicians (psychologists and psychiatrists) attached to the Children's Court Clinic, 44 being sessional and 6 full-time. The educational and experiential requirements for those working there have progressively been raised to ensure that the Court Clinic is a clinic of specialists. Indeed, there are no novices, a doctorate and 10 years of experience being now the norm for Children's Court Clinic psychologists. Kindness of disposition and balance are also prerequisites as you would have surmised. The Clinic has become a well –established teaching unit; clinical and forensic doctoral students from six of Victoria's universities have had observational training placements there, psychiatry registrars visit, lectures have been given in universities for many years and papers are presented at conferences nationally and internationally.

The Clinic works only for the court itself, primarily for the Children's Court, but also for the County Court of Appeal and, though rarely, for the Supreme Court in child matters. It works solely by Court Order. The service is state-wide, for metropolitan and country courts. The client is the Court but the Clinic is to work always in the best interests of the child. When the Court wants an independent appraisal of a criminal matter, or of a family in protection proceedings, a Court Order is made for a

Children's Court Clinic assessment and report. The Clinic's function, then, is to gather clinical data to add independently derived advice to what is already before the magistrates to aid their decision making. It is the strict independence of the Children's Court Clinic that makes for trust and confidence in magistrates and judges, that the report writer is beholden to the Court only. The independence of the report writer is valued also, to enable clients to let down their guard to engagement, and often to provide a fuller story than is known, because the client understands that the clinician is working for the Court without vested interest, and is not affiliated with other agencies. Providing a safe space for clients to talk meaningfully is what is at issue.

Twenty five percent of the cases seen are child/ adolescent criminal matters and 75% are protection cases. In recent years the Clinic has seen between 800 and 1000 children and their families for assessment yearly. The Court most often provides terms of reference for the report. The Court Order is given to the Clinic, the material sent from the Court is read by the Director and a clinician from the discipline appropriate to the case and with the skills related to the presenting problems is chosen. The family in a protection matter attends the Court Clinic for a whole day, a variety of interviews and, where indicated, psychological testing taking usually 5 hours or more. Criminal matters are seen either at the Court Clinic or, if the youth is remanded, at remand centres. Sometimes more than one clinician is needed in a case, for example, a neuropsychologist and a forensic psychologist. The report is read critically by the Director before it is submitted to Court. The Court can also order treatment by the Clinic during an interim order, in those cases where the Clinic has advised that short term treatment could potentially affect the recommendation to be made to the Court at the end of the intervention. Since so many criminal matters are drug related, the Clinic also has a dedicated drug program that can provide not only assessment but short-term treatment.

What kinds of matters are referred to the Clinic? The Clinic gives specialist clinical advice on issues of attachment, access for a child to a parent, where a child should reside, assessment of the parenting capacity of parents, baby battering, risk of sexual abuse to a child by a familial adult/adolescent in the Family Division of the Court, family violence; sexual abuse by minors and violence risk in the Criminal Division of the court, advice on drug addiction, acquired brain injury, fire-lighting, learning disorders, doli incapax, that is, whether a child below 14 understood at the time of the offence that what he was doing was not only wrong, but seriously wrong, mental impairment and fitness to be tried, current mental status(including reporting on responding to crisis calls to go to the Children's Court cells to assess the mental health of a youth), stalking, elective mutism, trauma and post-traumatic stress, Autism Spectrum Disorder, and so forth. Clinicians are, on occasion, called on to give opinions on protective matters concerning children or parents who are disabled, intellectually or physically, including some who are blind or who are deaf, having to work with the latter through signers. They have also to interview persons from many different cultures who may not speak or understand English well- persons from Africa, Asia, Europe or South America- communicating through interpreters. The Court Clinic also attends

importantly to aboriginal cases, being mindful of the continuing impact on families of the stolen generation.

Who are the Clinic's families and what are their needs?

Although occasionally they come from circumstances of substance, more often than not their circumstances speak of disadvantage, of educational, social and financial poverty, sometimes of two or even three generations, where people are at times insecurely housed, with limited supports and often not employed, in a changed society where jobs for those not in good circumstances have all but disappeared. Many of the mothers we see have never worked, having had children early, and when one gets late into the 20's in age and has never applied for a job, it can seem a task that is insurmountable in terms of confidence. Work has the important reward of social connectedness, so our client parents, possibly both without work, can feel isolated, and there may be little to boost confidence. Hope, when it diminishes, can lead to alcohol and drug use, with the heightened possibility of domestic violence with its negative effects on children. If this becomes frequent, authorities will likely intervene, and at that point, how one intervenes is absolutely crucial to whether there is proper engagement of the family, and whether the children can remain at home.

Occasionally, a child seen at the Court Clinic comes from abusive circumstances so blatant, excessive and intractable that the reasonable person would quickly recognize the need to remove the child permanently. Those are not the usual referrals to the Children's Court Clinic. Instead, the children assessed are very often children who might make it at home if engagement of the family is kindly, respectful and quality remedial input is made available. These are "grey area" children, whose circumstances need to change for them to develop healthily. Numbers of those latter children without quality treatment input with the family run the risk of becoming false positives, **needlessly being removed from home permanently**, a system's abuse that could affect a child's life course and arguably **ranks with the seriousness of error of not taking a child away from unacceptable risk.** The recommendations made by a clinician, mindful of the need for extreme care of a child, will invariably involve the invocation of the least worst alternative for the child. Let me make comment on important needs in the management of protection cases, then in criminal cases.

In protection matters, from my perspective, kind engagement of families, and timely appropriate remedial intervention with parents (and the two are linked) seem to be the Achilles Heel of an intervener. Concerning the latter, practices seen in the field have sometimes made me question momentarily whether there is an unwritten governing philosophy, that I don't know about, underlying the management of the welfare of socially and emotionally deprived children in Victoria: does a guiding philosophy exist here that suggests that remediation of children's home circumstances is just too hard, and, indeed, that remediation of the problems at home is in any case an inferior intervention to removing children to some other living circumstance permanently?; but I know I must be mistaken because it would be contrary to Human Rights law and

psychological wisdom for any agency to subscribe to such a philosophy. Most certainly the Court Clinic does not.

Perhaps the reality for the interveners is that the services families need are in too short a supply across the State and the workers themselves cannot keep up with the demand to work the cases actively, many cases remaining unallocated. The State does have the responsibility to offer proper remedial care to families where that is appropriate, whether it be coaching in parenting, family therapy, treatment of mental health problems of a parent and so forth. The groundwork to offering such interventions where they exist is to have made a good connection with the family from the outset. Too often that has not occurred. There is a broader responsibility for governments, of course, and that is to try to effect employment and to provide housing for those without means. Deprivation is multi-layered and across systems. The systems do, however, need to communicate better with each other. Treatment may well be needed but if a family has been living in a car, housing waiting lists offer nothing permanent and treatment takes second place to survival.

In criminal matters, language learning problems and the school drop-out status of juveniles involved in crime is endemic. Helping young people feel good about school attendance by special help with their learning problems is an imperative. They don't have to be stars, they just have to stay on at school. Indeed, not only does longitudinal psychological research show that, for example, membership in a sport, a church or a community group helps those who are disaffected, but, importantly, merely staying on at school is a protective factor against delinquency. It helps socialization and learning, this in turn promoting self-esteem. School-aged youths at home, without school or work, will congregate with others and readily find drugs, some of which will have lasting negative effects on the brain. The absolute necessity of keeping youths at school, with all that might entail, is an important need to be addressed by authorities.

Further, of young people who offend, there is a group, often who have been traumatized, who are seriously at risk of self-harm, through drug-taking, for example. I am thinking of one boy before the court who overdosed three times in a fortnight. Mental Health facilities do not want them- they are usually discharged next day from hospitals- and they can walk into a drug facility through the front door and walk out the back, as there are no secure drug facilities in Victoria. Often by default they go to remand centres. There is a significant need for a contained therapeutic facility for seriously at risk young offenders, one that has Court oversight. Magistrate Jennie Bowles gained experience of overseas such facilities on a Churchill Fellowship, and a steering committee is developing a plan for a dedicated therapeutic facility, but Government action is needed to make it a reality.

To complete my overview of the Court Clinic in 2017, I bring to attention the Court's specific instructions to the Court Clinic- the Terms of Reference, which became practice approximately 10 years ago. The magistrate can direct the Clinic to certain questions, either that he or she has wanted an opinion on, or that parties have put to the magistrate who has then sanctioned that the Clinic give advice on their questions.

The matters to be assessed at the Court Clinic in accord with the Terms of Reference are becoming longer, more complex and more varied in protection matters. Never is there a sole question of the Clinic in the Terms of Reference. To give an example of this, a Terms of Reference that came to the Court Clinic lately specified the following (details have been disguised here):

-Assessment of the child's attachment and relationships with mother, father, mother's partner and father's partner.

-Neuropsychological assessment of the mother.

-Comment on the mother's capacity to learn and apply skills required to manage the child's diabetes;

-Any suggestions in relation to the best ways in which information should be provided to the mother to maximise her learning capacity in relation to managing the child's diabetes;

-Sexual offenders' risk assessment of the biological father.

-Comment on sexual risk the father poses to the child and whether the current arrangements for supervision of contact address any potential risk to the child.

- Assessment of paternal grandmother

-Paternal grandmother's capacity to provide support or monitoring of the mother's care of the child in light the Department's concerns, and/or to care for the child.

The perception by others of the Children's Court Clinic.

There is interest in the Children's Court Clinic both from overseas and within Australia. Visits from international jurists to discuss the work of the Clinic take place from time to time, judges from other states visit and there was endorsement of the Children's Court Clinic by the Australian Law Reform Commission and the Human Rights and Equal opportunity Commission in their report No 84. In that report, they recommended that other states in Australia establish children's court clinics modelled on that in Victoria; consequent to that NSW set up the second Children's Court Clinic in Australia in 2002, although that clinic is now somewhat divergent in model. Apart from the high numbers of referrals made to the Clinic, there are various evidences of the Victorian Children's Court's approval of the Court Clinic, through comments in judgments, in the granting of the Children's Court Award to the Children's Court Clinic in 2009, and in August 2012, at a magistrates' conference, a motion being passed, endorsing the Children's Court Clinic of Victoria, describing it as " an invaluable source of centralized, independent expert opinion and advice on matters in the Family and Criminal Divisions of the Children's Court." In recent times the Children's Court Clinic has been subsumed under the Children's Court itself within the newly formed Court Services Victoria.

Despite its well credentialed staffing, professional awards, signalling endorsement by its professional body and its acceptance by the legal fraternity generally, the Children's Court Clinic has detractors, and detractors have been a crippling force on occasion, even threatening its closure. Indeed, in a very long career of working along- side the intricacies of court process, of dealing with a myriad of life difficulties experienced by children and their families, of being so often privy to their pain, their distress and deprivation, nothing has been as daunting as the politics encountered in working in the protective sphere. Enduring those politics is only for the constitutionally hardy, because they are brutal politics. It follows as a political reality in Victoria, related to a culture that has thrived over the past 25 years, that If a facility has very well qualified staff yet also the capacity to provide an independent advice to the Court that can at least potentially disagree with the advice put by others, its continued existence may not be appreciated by the risk averse. The Children's Court Clinic has been vilified – for example, the press being told that the Children's Court Clinic does its assessments in an hour, and being called "parent lovers" when seeking to help children through helping the parents also, in accord with psychological literature and practice and in accord with the tenets of the UN convention on the rights of the Child, September1990. Further, when reviews are undertaken, comments made by detractors- comments not made under oath and cross-examination for their veracity to be tested- may be poorly informed and relate more to rumour than to reality and a Public Service facility has no redress from scuttlebutt.

It is known in the public domain, having been featured in the press, so I can talk about it, that in 1992 the Children's Court Clinic was suddenly placed under Protective Services, where it was seen by the legal fraternity to be then in a conflict of interest, since its staff was being paid by the as -it- were prosecutors in protection matters. The then Chief Justice of the Family Court, Justice Alastair Nicholson, spoke out to the press about this conflict of interest for the Children's Court Clinic, as did the Bar Council and other legal bodies and a 7-30 Report was made concerning the Clinic. The press persisted and after 14 months the then Premier placed the Court Clinic under Justice. As Public Servants we could (and can still) say nothing of that time.

Not only has the Children's Court Clinic been disparaged, but the Court itself has been assailed, despite its reputation of pre-eminence among children's courts in Australia. I might add that it is a court for which the Children's Court Clinic has immense respect, having observed first hand over years the painstaking deliberations on the best interests of the child by magistrates. In 2010 "a coalition of human services and child protection agencies called for major change, including the removal of the Children's Court from the Child Protection system." That sentence just quoted came from an article in the Alternative Law Journal, Volume 37, 4, 2012, entitled "In Defence of Victoria's Children's Court. Its value and role in the Child Protection system", by the RMIT academics, Bessant, Emslie and Watts. They spoke of the cultural background in which this push occurred and of the agencies vocal at that time. In wanting to disband the Children's Court the agencies were wanting a panel largely of social workers to act in its stead. An inquiry was

established, inquiry by the Law Reform Commission, and it endorsed the maintenance of the Children's Court of Victoria, as later did Cummins in 2012. Merely two years later, however, in 2014, new legislation, the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act, 2014, was suddenly presented by the then Victorian Minister for Human Services to Parliament and passed, which had the effect of materially cutting the powers of the Children's Court in protection matters. On the day after the law was passed, the State Politics Editor of the Herald Sun, James Campbell, August 22, 2014, General News, page 38, wrote an informed observational piece on the effect of the new legislation which showed quite some insight into the politics of the time. Curiously, the public has not seemed interested in one of the most momentous changes to law that I have seen in what is now over 50 years of my career.

I have been silenced from giving my views on the new legislation, because I work for the Children's Court and also because I am a Public Servant. That has meant the cancellation of commitments to present on the issue both at an overseas children and the law conference and at local professional events, where added debate among professionals could have been valuable. I believe I am able, however, to speak to the lead-up to the Amendment since the Present Minister for Human Services, when in opposition, did so in Parliament and that is on public record. I shall then put to you, without comment, what the new law imputes.

First, the way the new law was instituted, with extreme secrecy, is in my experience, unprecedented in this field. It is normal practice when important child law changes are to occur, for there to be extensive consultation over many months, through focus groups, public meetings, open discussion of what should be put into law and an absence of secrecy about intentions. A perception of fairness and resolution of some differences can come from open discussion. The very fact that agencies were selectively consulted, some being told part of what was to occur and having to make secrecy agreements, should have caused community unease when the matter was brought to light in Parliament by the now Minister for Health and Community Services, when she was in opposition. I refer you to the parliamentary reporting of Hansard, page 2761, on September 2, 2014, that the then Shadow Minister for Human Services said during the debating of the Amendments :" I understand the Government (the State Liberal Government of that time) chose to gag stakeholders from talking about their discussions with the Department by requiring them to sign confidentiality agreements. None of them had the opportunity to see the legislation before it came to Parliament. In fact, some stakeholders…. were excluded altogether." That the clandestine nature of the consultation process did foreclose very important open debate in the field is notable.

Again I am not permitted to offer a critical appraisal of the new legislative Amendment. I can say that there was good intention in this Act to speed up the process to permanent care for those children whose return home was unequivocally contra-indicated. Few would argue with that, although why there was a protraction of time in numbers of cases is certainly not a simple issue, but related to many things, the lack of contracting of, or availability of, services early in the process

for one, and foster-care unavailability another. What the law means for children and families now you will need to consider yourselves, or go to the Law Institute website, for example. Let me mention important changes, prefacing this with pointing out that the permanency objectives for children in the Amendment, beyond that of family preservation and family reunification have an order of preference that puts adoption before permanent care.

In overview of the new sections of the Act, the Department of Health and Human Services has been given far greater powers than it had and the powers of the Children's Court have been considerably reduced, its ability to tailor dispositions to the very particular needs of the child being greatly diminished. The purport of that you would need to consider very carefully indeed. There have been changes to the names of orders, so that Supervision Order is now deemed Family Preservation Order, Custody to the Secretary Order is Family Reunification Order and Guardianship to the Secretary Order is now Care by Secretary Order. The useful order for seeing whether change could be demonstrated by the parents complying with some requirement, or else for the Child Welfare to demonstrate some action the Court requires of the Department over 3-months- the Interim Protection Order- has been abolished. Also, the time limits imposed on the family's improvement of their situation is fixed, which has enormous implication for the individual case, the individual child. As before in respect of Guardianship orders, Magistrates cannot apply conditions on the Care by Secretary Orders, for example, concerning a child's living circumstances and contact between a child and parent and others significant to them, for example, brothers and sisters, but now the number of children designated to be cared for away from home, ongoing, has grown to include not only the old Guardianship population but some children who would previously have been placed on an Extension of Custody to Secretary Order from whence there could have been home return; that is, the uptake of increased numbers of children into potential continued care away from home has been facilitated by the law change. Further, the Court is not able to have timely oversight of those on Care by Secretary Orders because now they mandatorily come back to Court only after 2 years. It is also of considerable note that on a Permanent Care Order, access for a child to a parent can occur only four times a year unless a carer consents to further contact. (In the experience of the Children's Court Clinic many carers are not disposed to further contact.) Further, Long-term Care Orders that can be made when a child is an infant and last until he/she turns 18, have negligible, and arguably no, oversight possible by the Court.

Without comment, but for comparison, I shall return to reminding you about my description of what was achieved in the wake of Carney in the 80's. Further to Carney:

"The Child Welfare Department was for the first time made accountable to the Court for its care of children post- court, conditions were placed on court orders, contact for children with their parents was enabled in legislation and the Court had the power of surveillance over Departmental management".

What has now been lost for many children is immeasurable.

Dr Patricia Brown

Director,

Children’s Court Clinic.

March 20, 2017.