



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 23

Legal Representation of Children

REPORT

JUNE 1972

REPORT ON LEGAL REPRESENTATION OF CHILDREN

To: The Hon. T.D. Evans, M.L.A.,
ATTORNEY GENERAL.

TERMS OF REFERENCE

1. "To consider in what circumstances the law should provide for the separate representation of children in court proceedings in which their interests are affected, but to which they are not parties."

2. The matter was raised by the Hon. the Chief Justice, Sir Lawrence Jackson (see C.L.D. 868/70). He drew attention to the fact that in proceedings concerning a child's guardianship custody or adoption, and in proceedings under the *Fatal Accidents Act* brought by the executor or widow for damages for all dependants including the child, there was no provision for the child to be separately represented at the hearing. He contrasted these proceedings with those to which a child was a party: in such cases a next friend or guardian *ad litem* is appointed whose responsibility it is to see that steps are taken to safeguard the interests of the child.

WORKING PAPER AND COMMENTS THEREON

3. The Committee issued a working paper on 21 March 1972. A copy of the paper is attached.

4. The Chief Justice had agreed with the approach taken in the paper. He suggested that provision for the separate representation of a child should be achieved by the enactment of general legislation rather than by separate enactments dealing with specific areas.

5. Four replies were received to the working paper as issued.

- (a) The Hon. Mr. Justice Wallace said he agreed with the Committee's suggestion and had no comment to make.

- (b) The State Crown Solicitor said that he agreed that the matters raised by the Chief Justice should be the subject of legislation and that he had no preference as to whether this should be done by a general statute or by enactments covering specific cases. He suggested that the Suitors' Fund should bear the cost only where there is no appropriate party or fund to bear the cost.
- (c) The Council of the Law Society said they agreed with the Committee's provisional views expressed in the working paper.
- (d) The Director of the Child Welfare Department said that although he agreed in general with the provisional views of the Committee, he thought that in guardianship, custody and adoption cases the best source of information for the court was a welfare report.

RECOMMENDATIONS

6. The Committee can see no reason to change the provisional views expressed in the working paper, namely that it is clearly desirable that the courts should have access to the fullest information as to the child's interests, and that the most appropriate way of achieving this is to empower the courts to order the separate representation of the child (see paragraphs 11 to 16 of the working paper).

7. The Committee therefore recommends the enactment of a statute of general application empowering the courts to order the appointment of a suitable person as guardian *ad litem* for a child when the court is of the view that the interest of the child is involved. The court should be empowered to appoint either a relative, a solicitor or a Government official or any person whom the court considers suitable. In case a court wishes the separate representation of a child in relation to part only of the proceedings, it should be empowered to limit the functions of the guardian *ad litem* accordingly.

8. It is unlikely that the power proposed will often be exercised. The Committee stresses that its proposal is not intended to supplant the present practice of giving information to the

court through a welfare report (see paragraph 6(a) and (b) of the working paper). In the cases where a report had been supplied, the power to appoint a guardian *ad litem* is likely to be exercised only where the court felt the need for counsel to examine and cross examine witnesses and to address the court from the point of view of the child's interest.

9. The Committee further recommends that a provision be enacted empowering the courts to order the costs of the representation to be paid, where appropriate, by a party to the proceedings or out of any fund in which the child has an interest, or, failing this, out of the Suitors' Fund (see the suggestion of the Crown Solicitor in paragraph 5(b) above).

CHAIRMAN

MEMBER

MEMBER

8 June 1972