

text. The book had its genesis in the 1990 Australian Child Protection Conference in Sydney where the chapters were presented. As the authors acknowledge, the text does not seek to present the breadth of work across Australia, but rather to highlight 'many current issues of importance to Australia, and the searches for new solutions' (p.12).

The text begins by examining child protection issues from an Aboriginal perspective. It reminds all practitioners that child protection is 'not just a matter of identifying physical or emotional abuse or the neglect of an individual child', but rather of improving conditions of life for all. The significance of the extended family to solutions in child protection matters is emphasised. How child protection issues link to questions of economic, social and political disempowerment is highlighted for Aboriginal families — and similar concerns apply to non-Aboriginal families.

The book examines child protection practice under the broad topics of prevention, children in the legal system, teamwork and decision making, and children's rights.

This text will be a valuable resource for child protection practitioners, and others involved in child welfare assessment and 'intervention'. The clear focus of each chapter means the reader can easily identify relevant parts as needed.

Various chapters examine: the role and limitations of community education

(this can increase awareness and knowledge of abuse across the community, but is arguably less effective in changing the values which contribute to abuse); the effect of the legal system on children (are children competent witnesses and what roles do advocates play for children in juvenile court settings?); and the use of 'irreconcilable difference' applications in the child welfare system (often wrongly characterised as 'no fault divorce' in a child welfare setting). Teamwork and its significance for child welfare professionals and for the children and families in the 'system' is discussed. Specific issues of assessment are covered such as the Munchausen by Proxy case, children in day care, group sexual abuse, and the child death inquiries.

The chapters on case-planning, children in the legal system, and the rights of children were, for me, of most interest. Research into case planning raised serious doubts as to whether the usual case planning process allows reliable decisions for the protection of children. Decision making in such a setting involves the inherent contradictions of support for the family versus the protection of the child, with the often opposing rights of parents, child and the community. The writers contrast the unclear role and purpose of case conferences and relative powerlessness of family participants, with the move towards seeing the family as both the forum for decision-making and, once made, the resource to implement these decisions.

For social work practice generally, but particularly for practitioners in child protection, the difficulty of balancing competing rights of parents, child and the state, is very real. So, too, is the reality of the impact of the 'system' — including the legal process — on parent and child. Regretfully, we have made limited progress toward a child protection system which protects children yet supports parents, and in which children are not traumatised by the very processes.

As this text discusses, we can redefine case planning and ensure competent independent advocacy is provided. But the core issue remains: can the child welfare and children's court system really protect children? Perhaps, instead of reconstructing bits of the system, here and there, a child protection system based on different values and philosophies is what is required. As Brian Butler, in the chapter on Aboriginal child

protection, writes '... Child protection for us is a matter of protecting our children from the negative and destructive influences of society, and from the intrusion of the "welfare" and other authorities in their lives'. For all families, this is the task facing the child welfare system.

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## Duty of Care Whose Rights?

*by Ian Parsons; Villamanta Legal Service, Geelong, 1992; 67 pp; available from the Service, 6 Villamanta St., Geelong, 3218, or (052) 29 2925, for \$12 (includes postage).*

Lurking in law libraries or legal bookshops are tomes for all sorts of professions and occupations: Law for Nurses, Law for Social Workers, This and the Law, That and the Law.

They all seem to follow a similar format: how the professional is affected by contract law, employment law, statute law, negligence, defamation, etc. They rarely look at life from the point of view of the discipline's clients.

*Duty of Care: Whose Rights?* does. Parsons wrote this book nominally as a guide for staff working with people with disabilities. In reality it tells workers how to enlarge their clients' rights and not be scared by the nasty 'duty of care' stick.

Villamanta Legal Service, a community legal service for people with disabilities (with special emphasis on people with an intellectual disability) should be congratulated on supporting this book. The book covers the traditional aspects of negligence: duty of care, standard of care, breach, harm, foreseeability, reasonableness, and voluntary assumption of risk by avoiding injury in the first place.

The book is a practical reaction to the changes in the disability area. Paternalism and overprotection are giving way to a realisation that clients must take control of their lives, that staff should not tell clients how to live but should encourage choice and individuality.

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The book strikes balances: a balance between controlling a client's life and ensuring the client is not unreasonably exposed to risk; a balance between independence and protection from abuse. It supports help that is constructive and not substitutional.

*Duty of Care: Whose Rights?* is also a practical guide to negligence law. It argues that the community's conception of care for people with disabilities has changed from a medical/custodial model to a rights model. Rights to take risks and rights to make mistakes. The model recognises people's dignity and need to develop their potential.

The book's argument is based on rights-oriented legislation like the *Disability Services Act 1986* (Cth). This is evidence that the *standard of care* has changed. Villamanta Legal Service hopes that courts will recognise the changed community standards and expectations placed on service providers.

Taking the argument further, Parsons says that part of service providers' duty of care is to safeguard their clients' rights. This could lead to problems. Rights may be in conflict. And staff usually have the power to decide which of those rights are to be safeguarded. For example, Mrs W has Alzheimer's disease. She lives in a hostel. She asks Joe, a worker there, to call her a taxi, as she wants to spend a day at the races. Joe is concerned that Mrs W will get confused and disoriented at the races. Joe, whether he likes it or not, has power over Mrs W's decisions about her leisure time.

The book challenges assumptions like a hierarchy of rights, and recognises that clients can change their minds or re-order their priorities, meaning they should be empowered to make their decisions. Expanding clients' experiences, exposing them to choice, and emphasising abilities not disability, are the attributes of a good service provider.

The book goes further (and this may be more applicable to people with an intellectual disability) arguing that staff have a duty to expand clients' rights by encouraging clients to develop friendships, exposing the world to them, and broadening their horizons. And yes, having friends and relationships means taking the bad with the good, the disappointments with the exhilarations.

I have used material based on Parsons' book (and an accompanying training guide the Service sells) in workshops I have conducted for workers 'at the coal-face' and their supervisors. I have emphasised that these set new benchmarks for standards of care: what the 'reasonable' staffer did a decade ago may not be appropriate in the current atmosphere.

Interestingly, most workers think that breach of duty in itself leads to a damages award. They are not aware of the requirement for actual injury or damage in negligence law. They think an irresponsible work practice, after which there may be action by professional associations, regulatory bodies or management, is negligence. *Duty of Care: Whose Rights?* not only corrects this impression, but goes further, asserting that the notion of injury should be

broadened.

For example, a resident who has recently 'deinstitutionalised' to a new community home becomes distressed and confused when she is asked what she would like for dinner. She has never chosen a meal before in her life and feels intimidated and bewildered at the question. Would her former institution be liable? Does their duty of care include giving her a real opportunity for self-determination? Are they negligent? Is there any breach of a statutory duty? This is unlikely now. But in the future...? Parsons hopes the common law will catch up with the changing culture for people with a disability. This may be wishful thinking. However, there is nothing wrong in *advocating* changes to practices by service-providing agencies and their staff.

Staff who use duty of care as an excuse to limit what they do for their clients will not like this book. Parsons asks: whose rights are they protecting? Theirs and their employers? Contrast the Victorian Department of Health and Community Services' guidelines on duty of care. They are, as you would expect, technically correct. But they are designed to protect the Department, not the rights of the clients they serve. They focus on the risk of physical injury. They give scant regard to encouraging individuals to develop in a climate of respect for their personal choices.

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## NOTICES

### HARASSMENT IN LEGAL EMPLOYMENT

Have you experienced poor treatment as an employee? The Employee Industrial Relations (EIR) section of the Law Institute of Victoria, together with Feminist Lawyers (FL) have received reports of inappropriate treatment in employment of female articulated clerks and solicitors. EIR and FL are interested in the types of gender discrimination and sexual harassment incidents which may occur, particularly when women are entering the profession. This information will assist in formulating recommendations to the Law Institute, the Law Council and to the profession regarding their roles in these circumstances and the improvement of com-

plaint procedures and education programs.

Have you experienced treatment in your employment that you consider inappropriate? Please describe the incident in writing and forward it to Feminist Lawyers at GPO Box 3122FF, Melbourne, 3001. Absolute confidentiality is assured.

### HIV/AIDS LEGAL CENTRE

A free Legal Advice Centre is due to open at the Positive Living Centre (a community centre for people living with HIV/AIDS) in Acland Street, St Kilda, in November. The Legal Centre is an initiative of the AIDS Council of Victoria.

The need for a specialist HIV/AIDS Legal Centre arose out of the perceived

need, by people working within the Victorian AIDS Council and in various areas of the law, for such a service. The Centre will be able to provide a comprehensive approach to the delivery of legal services to people living with HIV/AIDS by lawyers trained in a wide range of HIV/AIDS related legal issues and the broader issues affecting people living with HIV/AIDS.

The Centre will initially operate one night a week and will be staffed by volunteers. For further information contact Lauren Finestone at the St Kilda Legal Service on (03) 534 0777, or Tom Dalton at the Northcote Legal Service on (03) 489 6321.